UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

PURDUE PHARMA L.P., ET AL. Case No. 19-23649-rdd

Debtors.

- x

U.S. Bankruptcy Court

300 Quarropas Street

White Plains, New York 10601

November 19, 2019

10:31 AM

B E F O R E :

HON ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

ECRO: NAROTAM RAI

Notice of Agenda for November 19, 2019 Hearing

Motion of Debtors for Entry of an Order (I) Authorizing the Rejection of Commercial Lease and (II) Granting Related Relief filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF 435)

Motion of Debtors for Authority to Employ Professionals Used in the Ordinary Course of Business Nunc Pro Tune to the Petition Date filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF 128)

Debtors' Motion Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF 434)

Application of Debtors for Authority to Retain and Employ Dechert LLP as Special Counsel to the Debtors Nunc Pro Tune to the Petition Date filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF 424)

Application of Debtors for Authority to Retain and Employ King & Spalding LLP as Special Counsel to the Debtors Nunc Pro Tune to the Petition Date filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF 427)

Debtors' Application for Authority to Retain and Employ AlixPartners, LLP as Financial Advisor Nunc Pro Tune to the Petition Date filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF 429)

Debtors' Application for an Order Authorizing Employment and Retention of Prime Clerk LLC as Administrative Advisor Nunc Pro Tune to the Petition Date filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF 439)

Application of the Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. to Retain and Employ Akin Gump Strauss Hauer & Feld LLP as Counsel, Nunc Pro Tune to September 26, 2019 filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. (ECF 421)

Application of the Official Committee of Unsecured Creditors for Entry of an Order Authorizing Retention and Employment of Bayard, P.A. as Efficiency Counsel to the Official Committee of Unsecured Creditors, Nunc Pro Tune to September 29, 2019 filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. (ECF 422)

Application of the Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. to Retain and Employ Province, Inc. as Financial Advisor Nunc Pro Tune to October 1, 2019 filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.P, et al. (ECF 423)

Application for Order Authorizing Employment and Retention of Jefferies LLC as Investment Banker to the Official Committee of Unsecured Creditors Nunc Pro Tune to October 4, 2019 filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.R, et al. (ECF 425)

Application of the Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. to Retain and Employ Kurtzman Carson Consultants LLC as Information Agent, Nunc Pro Tune to November 1, 2019 filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.R, et al. (ECF 426)

Motion of the Official Committee of Unsecured Creditors of Purdue Pharma L.R, et al. for Entry of an Order Clarifying the Requirement to Provide Access to Confidential or Privileged Information and Approving a Protocol Regarding Creditor Requests for Information filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.R, et al. (ECF 415)

Motion of Debtors for Entry of Interim and Final Orders Authorizing (I) Debtors to Continue to Use Existing Cash Management Systems and Maintain Existing Bank Accounts and Business Forms and (II) Financial Institutions to Honor and Process Related Checks and Transfers filed by Eli J. Vonnegut on behalf of Purdue Pharma L.R (ECF 5)

Application of Debtors for Authority to Employ and Retain Davis Polk & Wardwell LLP as Attorneys for the Debtors Nunc Pro Tune to the Petition Date filed by Eli J. Vonnegut on behalf of Purdue Pharma L.R (ECF 419)

Application of Debtors for Authority to Retain and Employ Skadden, Arps, Slate, Meagher & Flom LLP as Special Counsel to the Debtors Nimc Pro Tune to the Petition Date filed by Eli J. Vonnegut on behalf of Purdue Pharma L.R (ECF 438)

Application of Debtors for Authority to Retain and Employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel to the Debtors Nunc Pro Tune to the Petition Date filed by Eli J. Vonnegut on behalf of Purdue Pharma L.R (ECF 427)

Motion to Assume the Prepetition Reimbursement Agreement with Ad Hoc Committee, and to Pay the Fees and Expenses of the Ad Hoc Committee's Professionals filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF 394)

Motion of Debtors for Entry of an Order Authorizing (I) Debtors to (A) Pay PrePetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Employees and Retirees to Proceed with Outstanding Workers' Compensation Claims and (III) Financial Institutions to Honor and Process Related Checks and Transfers filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF 6)

Debtors' Application for Authority to Employ PIT Partners LP as Investment Banker Nunc Pro Tune to the Petition Date filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF 430)

Debtors' Application to Employ Ernst & Young as its Auditor, Nunc Pro Tune to the Petition Date filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF 432)

Transcribed by: Sherri L. Breach & Penny Skaw

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P R O C E E D I N G S

THE CLERK: Please be seated,

THE COURT: Good morning. In re: Purdue Pharma L.P., et al.

And before we start, let me apologize for the delay. They were apparently impaneling a grand jury today, so there was a long line before everyone present added to the line, which delayed the security process.

Okay. So I have the amended agenda.

MR. HUEBNER: I'm going to say that. Your Honor, Mr. Preis asked to address two things quickly which I, of course, acceded to.

THE COURT: Okay.

MR. PREIS: Okay. Good morning, Your Honor. Arik Preis from Akin, Gump, Strauss, Hauer & Feld on behalf of the creditors' committee. I just wanted to address two things because you will quickly understand why I want to do this before the hearing starts.

Late on -- when we submitted our response to the motion to assume the reimbursement agreement, we had indicated that the State of Maryland was added as an ex officio member to our creditors' committee. That was true at the time. They had accepted.

As of Saturday night, they have decided to withdraw.

THE COURT: Okay.

MR. PREIS: I didn't want to file something on the docket and then have -- then have some sort of colloquy in front of the judge where Maryland had to respond.

I actually -- I know that they were outside. They actually may not be in the room yet. But I didn't want there to be any confusion today in case it came up --

THE COURT: Okay.

MR. PREIS: But we did not have a chance to file something on the docket taking that off. Okay.

THE COURT: That's fine.

MR. PREIS: The second thing, just very quickly, Your Honor, one of our creditor committee individual members is here today, Ms. Cheryl Shulayer (ph). She just wanted to -- we just wanted to introduce her.

THE COURT: Okay.

MR. PREIS: That's all.

THE COURT: Good morning.

MR. PREIS: Thank you.

MR. HUEBNER: Good morning, Your Honor. May it please the Court, Marshall Huebner, of the law firm of Davis Polk & Wardwell, here on behalf of the debtors.

Your Honor, let me begin with a piece of good news, which is actually not apparent on the docket, but an email should be on its way to chambers almost literally as

we speak, which is we have actually reached agreement with all parties on the form of injunction order.

Your Honor, may remember I described a double exit ramp where on two dates, on December 19th and February 21st, the dissenting states as it were could choose to flip from being voluntarily bound to the terms of the injunction to being involuntarily bound and, thereby, triggering an appeal right.

THE COURT: Right.

MR. HUEBNER: The mechanic that actually, I and I think Ms. Finer (ph) as well described on the docket to you last week ended up working just fine. It took us a few days to get the language right because, you know, everyone likes their own drafting. But that is now done done and it is on the way into court.

And I don't want to let that actually go too quickly because I think it is worth noting for a moment that the fact that with the exception of the two counties -- Your Honor may remember there was one very specific lawsuit, but I think we were all quite surprised when someone stood up out of the blue having not spoken at all at the earlier hearing and made a big speech.

With that one exception, which I think is a very small exception, the fact that essentially now every state in the union that potentially has police powers that they

alleged might be exempt from the automatic stay has voluntarily consented to an injunction that may go as long as April 8th. But at a minimum will go at least as long voluntarily until either December 19th or February 21st. It's just a tremendous accomplishment and not a place that I thought that we would be.

And so, you know, I know that, you know, we promised you on the opening day of the case, as we feel very passionate about, that we worked day and night and night and day to settle everything that we possibly can. I am obviously not unaware that we have two smaller contested matters and one large contested matter on for today, but I also don't want that to mask the tremendous underlying progress that (indiscernible) made on issues large and small. There is a lot going on behind the scenes with many of the parties in this courtroom, even ones with whom we are constrained to litigate against today that we believe are advancing the ball. It's not appropriate for me to talk about what those things are in terms of documents or stipulations or diligence or meetings because that is work that should be behind the scenes.

But, obviously, the injunction which is what we had aspired to really starting to months and months before the case to give us all an initial window to try to progress this in a very unusual and, you know, materially less

litigious case that I think anybody could possibly have imagined is actually proceeding exactly as we had hoped.

THE COURT: All right. That's very positive and relevant. So is that going to be in the form of an amended order?

MR. HUEBNER: Yes. Yeah. There's a supplemental order that build -- it -- the way the order that we submitted on November 6th worked, it sort of bridged, you know, there was a footnote that said, the following parties agree to voluntarily comply, essentially until we submit the order which we hope will have the (indiscernible). There's now an order that does it all. So there will be one amended order, just like there was after the October 11tgh hearing when, a week later, we got the full list of --

THE COURT: Right.

MR. HUEBNER: -- interim voluntary compliers and we sent in an order. So this order will do it all and, frankly, you may never need to enter another one because if the voluntary compliance does not terminate by filing a notice of termination on the docket, this order actually runs till April.

THE COURT: All right.

MR. HUEBNER: So it's done, done.

THE COURT: Okay. And then I guess one other point I wanted to raise with you. The stipulation with the

creditors' committee and various shareholders --

MR. HUEBNER: Uh-huh.

THE COURT: -- and companies was noticed for presentment. I think the objection date has passed.

MR. HUEBNER: Yes. I believe --

THE COURT: Is --

MR. HUEBNER: -- it was actually yesterday, Your Honor.

THE COURT: So will you be sending that to me also?

MR. HUEBNER: Yes. The answer is yes. There's actually one thing that someone asked me to clarify with them and just in the frenzy of preparing for this we weren't able to do that. I think it works just perfectly and we'll probably send it in some -- someone will -- someone at Davis Polk please remind me to make sure we take care of that when this hearing is over. And that should, I believe, be ready for entry as well, another milestone and maybe I should have listed as yet another thing I think is atypical and quite important to try and help us all proceed rationally in an almost impossibly difficult and complex situation.

THE COURT: Okay.

MR. HUEBNER: With that, Your Honor, the -- I think it probably makes sense to just knock out the uncontested matters first so that we can get them out of the

way and ensure that the Court does not have any questions. And I would turn the podium over to my colleague, Dylon Consla, for that.

MR. CONSLA: Good morning, Your Honor.

THE COURT: Good morning.

MR. CONSLA: So I'll try and move through the uncontested matters quickly here.

THE COURT: Sure.

MR. CONSLA: So the first item on the agenda is the commercial lease projection, Docket Entry Number 435. There were no objections and we filed a CNO at Docket Number 507. So unless there are any questions we would ask that that relief be granted.

THE COURT: This is the lease in Princeton?

MR. CONSLA: That's correct.

THE COURT: All right. Where the property was turned over towards the end of September?

MR. CONSLA: That's right, yeah, as of the date that we're seeking to reject as of. It was vacated.

THE COURT: Okay. I'll grant that motion which, as you say, is unopposed and supported by good business reasons. So you can email that order to chambers.

MR. CONSLA: Thank you.

The next item on the docket is the ordinary course professionals' motion. This is Agenda Item Number 2, Docket

Entry 128.

So in this case after extensive discussions with the committee and the ad hoc group, we filed a proposed revised form of order last night with admittedly fairly extensive changes, but the result of that negotiation we think addressed all of the issues.

I have a blackline to hand up if you --

THE COURT: Well, I -- this is the same version that was sent to chambers yesterday, I believe.

MR. CONSLA: Correct.

THE COURT: So I have that.

MR. CONSLA: Okay.

THE COURT: So does anyone have anything further to say on this motion?

Okay. I guess the one -- the order talks about disclosure in connection with former representation or current representation of shareholders.

MR. CONSLA: That's right.

THE COURT: I'm not sure the form actually pulls that up, the form that's attached, the disclosure form.

MR. CONSLA: You're looking to Question 9 in the questionnaire?

THE COURT: Well, maybe I just missed it.

MR. CONSLA: Here. I'm --

THE COURT: It is there? Okay.

MR. CONSLA: It's at the very, very end. I think if you flip to literally the last page.

THE COURT: Oh, yeah. You did. Oh, so -- okay. I was looking at the old form. But you added that question.

MR. CONSLA: Yeah. That's right. Can I hand up a blackline if you don't have --

THE COURT: No. No. I have it. I just --

MR. CONSLA: Okay.

THE COURT: I just -- I stopped at the order.

MR. CONSLA: Yeah.

THE COURT: Okay. Thank you.

MR. CONSLA: Yeah.

THE COURT: So I'll grant the motion.

MR. CONSLA: Okay. Thank you, Your Honor.

THE COURT: Okay.

MR. CONSLA: So I would turn back to the remainder of the agenda.

So the next item is the interim compensation motion. In this case we also -- that's -- sorry. That's Docket Number 434. We filed a CNO at Docket Number 510. The CNO attaches a revised order that has literally one change to one number; that is, changing the period after the 45 days to submit fee applications to scheduling a hearing from 45 days to a 30 days for people to review at that point, and all the relevant parties agreed to that.

So we would -- unless Your Honor has any questions, of course, respectfully ask that that motion be granted.

THE COURT: Okay. Does anyone have anything to say on this motion?

All right. Based on my review of it, it's consistent with similar interim compensation motions that my colleagues have entered over the years consistently in cases of this size.

There's no cash collateral order here, so there isn't the same need to monitor cash as per a carve-out or a budget. But on the other hand, I think it's worthwhile to have key parties in interest reviewing the fees every month to make sure no one's going off the deep end or even the -- you know, exceeding what they should be doing as far as expectations. So I think it's worthwhile to have this procedure here.

So I'll grant the motion.

MR. CONSLA: Thank you, Your Honor.

So the next items on the agenda are retention applications for both the debtors and then for the committee professionals. So I would ask to preference. Should I walk through those individually or would you prefer to consider them as a group?

THE COURT: Well, I have reviewed each of them and

I can tell you I have -- I appreciate -- and these are the uncontested ones.

MR. CONSLA: The uncontested ones. Correct. The contested ones are later in the agenda.

THE COURT: Right.

I really only have two -- one question and one issue.

MR. CONSLA: Uh-huh.

THE COURT: Let's put it that way. On the law firms which include Dechert, King & Spalding for the debtors, and Akin Gump and Bayard for the committee, I only had one question, which is -- which I'll preface by saying I actually welcome the notion that the committee decided to hire Bayard not as a conflicts counsel, but as an efficiency counsel, which is, I think, a nice way of saying a less expensive counsel for matters that are appropriate.

But as far as the services that Bayard is rendering, and I appreciate that they acknowledge that they'll be doing the best they can not to duplicate efforts, some are listed as being requested by Akin Gump and the committee, some are listed as assisting Akin Gump and the committee, and some are listed as working in conjunction with Akin Gump and the committee.

And I'm just not sure what -- is there any real distinction there? I mean, how are they getting their

assignments. That's really my question. So that there's some control over avoiding duplication of effort and they know what they're supposed to be doing and they're tasked to do it.

MR. ALBERTO: May I address that?

THE COURT: Sure.

MR. ALBERTO: Justin Alberton from Bayard, proposed co-counsel to the committee or efficiency counsel as Your Honor just mentioned.

When we drafted this agenda, we were still -- or excuse me, when we drafted this application we were still working through proposed assignments and division of labor issues with Akin Gump.

If Your Honor were to look at the agenda for today, so as an example, there are things like the ordinary course professionals motion, interim comp, and other various retention issues that my firm has handled. And we have strived over the course of the last 45 days to make sure that things that Akin Gump is handling Bayard is not, and vice versa.

THE COURT: So is there some coordinating person at each firm that basically --

MR. ALBERTO: That's been Mr. Preis and myself, Your Honor.

THE COURT: Okay. So you just -- when something

is filed on the docket or the committee wants somebody to look at it, you two speak to each other and --

MR. ALBERTO: That's absolutely right. And we don't act without speaking to Mr. Preis first.

THE COURT: Okay. All right. That's probably the only person in his life that's like that, but --

(Laughter)

MR. ALBERTO: It's been a fun 45 days.

THE COURT: So that's fine. And, again, the assignment is something I welcome.

So I'll grant the application as well as the other attorneys' applications. I think we should amend the order just to reflect what was stated on the record as far as, you know, the division order.

MR. ALBERTO: We can do that, Your Honor.

THE COURT: Okay.

MR. ALBERTO: Thank you.

THE COURT: Thank you.

Okay. And then I -- does anyone -- let me just say, does anyone have anything to say on the uncontested counsels' retentions? Okay.

And then turning to the financial advisors, bankers, et cetera, as well as Prime Clerk, so that would be AlixPartners, Prime Clerk, Province, Inc., Jefferies. I don't think -- and I'm sorry, Kurtzman Carson. Three -- I'm

sorry. Four of those as is -- well, all of them, as is consistent with, again, the case law in this district, have a limitation on a limited identity. They're indemnified other than for their gross negligence, willful misconducts -- misconduct, in some cases, and/or breach of fiduciary duty, if any.

But four -- Prime Clerk, AlixPartners, KCC and Jefferies -- have caps on those indemnifications limited to their compensation of the case. And I don't know if this has been the subject of discussion with them. I know in recent cases involving Prime Clerk and Kurtzman Carson I have stricken that on the basis that the type of liability we're talking about here is really serious, willful misconduct, gross negligence, and it's quite conceivable that it could be more than the fairly limited compensation, at least that those entities would have.

So I don't know if this has been discussed or if their representatives are present here, but my inclination would be the lift the limitation on liability for at least willful misconduct and breach of fiduciary duty, if any. I mean, to me if someone is just looting and pillaging, that it shouldn't be limited to their fees.

MR. CONSLA: So for that matter I think we would defer to the particular professional.

THE COURT: I'm not assuming that they will, of

course. So it's probably an ice in winter, but I just don't like the idea of proving that.

MR. CONSLA: If any --

THE COURT: Okay. Well --

MR. CONSLA: -- if anyone wanted to --

THE COURT: Well, I will grant each of those applications with that language taken out. And the U.S. Trustee can show you language from one of my more recent orders dealing with, I forget whether it was KCC or Prime Clerk, but --

MR. CONSLA: Uh-huh.

THE COURT: -- it's a -- it's one more carve out that's in the order. If I'm missing something here that is of great moment to AlixPartners or Jefferies, who clearly have more fees at stake, so, you know, they can tell me. But that's my ruling on those motions.

MR. CONSLA: All right. We'll make that change.

THE COURT: Okay.

MR. CONSLA: The last uncontested matter is the creditor committee's information access motion. And so, you know, obviously if you have any questions I'll defer to them. If not, we have no objections to that being granted. That's Item -- Agenda Item Number 13.

THE COURT: Okay.

MR. CONSLA: Docket Number 415.

THE COURT: All right. Does anyone have anything to say on the committee information access motion?

Just to be clear, this is not anything more than the access the committee -- as a committee is required to provide under the Bankruptcy Code and the appropriate limitations on it to the public, not access to information that the parties are looking on and the case generally, which would be the subject of either a motion or hopefully a stipulation.

So seeing no one has any questions or comments, and noting that it's unopposed, I'll grant the motion. I think I had the first opinion that actually dealt with the issues raised by the amendment to the code that dealt with the tension between a committee's duty to provide access to the public and its duty not to disclose confidential information, waive attorney/client privilege and the like, and -- in the Refco case, and I think this protocol as well as the use of the information agent is consistent with the case law.

So I'll grant the motion.

MR. CONSLA: Thank you, Your Honor.

That brings us to the end of the uncontested section of the agenda. So at this time I'll hand the podium over to Mr. Huebner to address the contested applications.

THE COURT: Okay.

MR. HUEBNER: Your Honor, for the record, Marshall Huebner. I will be very quick on this remaining point.

The United States Trustee has no objection to retentions of Davis Polk, Skadden Arps and Wilmer Hale, but has objected to what is contemplated by these applications which is the firms holding their retainers until the end of the case.

I'm going to make nine very quick points and otherwise rest on our papers which I think address the issue appropriately.

One, this is a very unusual case. Your Honor actually just mentioned, and I'm glad since it's a perfect segway, most cases have carve outs and they have super priority claims. And the way the professionals in part are comforted by the risk that they're asked to take by the statutory structure is that they are basically guaranteed to jump even on top of secured creditors for all fees incurred prior to a trigger date and then for an agreed budgeted amount for amounts afterwards. And those are given both status and lien rights super to anyone else.

We have none of that here, and you might say, well, there's no secured debt here. But what we do have instead, frankly, is a truly unprecedented case with dozens of governmental claimants, many of whom have rights that they have not actually necessarily chosen yet to surface

with or exercise, but could actually, if things don't go well, take this case in a very complex direction.

Number two, the debtors have a very substantial cash balance, over a billion dollars. And even the trustee has not alleged that we are draining liquidity that is needed by the estate right now to pay its bills. and so, you know, I think that's a relevant factor as well. It's relevant in case law and otherwise. You know, if the debtors had $20 million of cash left in the bank, we would at least be having more complex conversation. With well over a billion dollars, it really is hard to understand why we're actually here litigating this issue.

Three, no party in interest, no economic party in this case has objected to this, neither the professionals, which the U.S. Trustee kind of strangely says is one of the two groups they're here to protect, but they're here representing other professionals who don't have this exact package of rights. They don't seem fussed by it, nor any other party in interest. The test is actually, you know, is this a problem for creditors. And we're not lacking for a surfeit of highly activist focused creditors in this case, and not a single one of them has had any issue with this.

Four, the U.S. Trustee is just wrong. Professionals hold retainers all the time, both out of court and in court. We stopped at 17 examples in the pleading

because, you know, you have to know when enough is enough. But the notion that there is some doctrine that, you know, this is just not done is just flatly wrong, period, end of story.

Five, there is no rule, there is no regulation, there is no statute, there is no guideline, there is just nothing that requires this. There just isn't. We're constrained in lots of ways by lots of rules that people impose on us. This one is just not on the books. And to try to add this in as sort of a new rule in this district when it's just not, and as much as I respect the U.S. Trustee, it shouldn't be. It's not appropriate. The cases they actually cite talk about a kind of facts and circumstances test, and if we're going to be discussing it, we should be discussing it under the little case law that there is which we're happy to do.

Because, six, even the cherry picked cases the U.S. Trustee cites, not one of them from this district, some from more than 30 years ago and 3,000 miles away, we easily satisfy. We went through the standards in our reply. There are five factors in Insilco and we're five for five.

And, by the way, every single case they cited, every one approved the professional holding the retainers. So, in fact, I don't think they found any case ever in the world, no matter how many decades they went back, where a

court actually said, and they cited to this court, let alone in a binding way that retainers have to be given up at the beginning of a case.

Seven, these three firms are actually extending de facto trade terms that are longer than any administrative creditor in this entire case. The whole case, there is not one creditor, because I asked, that is extending 75 day unsecured trade terms to this estate, not one.

Eight, there is no basis and none articulated for asking counsel to take the most risk and extend the most credit of anybody in the constellation of the debtors' dozens or hundreds of counterparties.

Nine, and this is the last one, all of Purdue's other administrative creditors have either letters of credit, deposits, COD or trade terms well below 75 days. Only the professionals have to contend with notice periods, objection periods, 20 percent holdbacks, 45 day waiting periods and then another 30 day waiting period for hearings, and, collectively, lend the debtors millions and millions of dollars entirely unsecured and entirely interest free at all times.

The trustee's claim that we have a "unfair monetary advantage over other creditors" is unsupported and unsupportable. We ask that their objection be denied and that the retentions be approved as requested.

THE COURT: Do you -- this has not come up and I'm assuming maybe -- well, I'll just ask you a question. I don't know the answer. Are there substantial 503(b)(9) claims here?

MR. HUEBNER: No.

THE COURT: Oh, okay.

I don't actually have the three firms' retainer agreements. And the other two firms' application doesn't really say that they're evergreen retainers. I don't know where -- what type of retainers are all three of these?

MR. HUEBNER: Yes. So, Your Honor, I don't want to over speak for the other firms, but let me say it like this. Certainly, it is understood -- and if it's helpful to the Court we will certainly add language that the retainers will be applied at the end of the case or otherwise as appropriate, and then any overage will, of course, be returned to the debtors. I don't think anybody is saying that anybody gets to keep what's leftover. Davis Polk's documents, which obviously I do control, are very clear on that point and they are evergreen retainers and properly structured as such.

I am assuming that Skadden and Wilmer are the same way, but I think it's an easy fix in the order to clarify that nobody is remotely suggesting that this money can be kept. It needs to be applied. The question is just, you

know, like so many other creditors in the case, are we allowed to essentially modulate what in our case is actually extreme trade terms and credit risk.

You know, as I said in the pleading, you know, you know X percent of the utilities went and got deposits pre-filing. No one is saying, hey, utilities, other utilities are sad that they didn't ask, you have to give back your deposits. This is just an individual contract and we think it's entirely appropriate.

THE COURT: Okay. And then my last question is these are not couched under 328(a), right, so I think I'm reviewing this under 329 because it was a pre-petition retainer? So I guess conceivably if facts changed dramatically in the middle of a case, one could revisit whether the retainer should be applied then or not, I suppose.

MR. HUEBNER: I mean, as Your Honor said at prior hearings, people are always welcome to make motions in front of you. But, yes, there's nothing here that says that the, you know, extraordinary unforeseeable circumstance and -- no. We don't lock this down under 328 at all --

THE COURT: Okay.

MR. HUEBNER: -- to my knowledge.

THE COURT: All right.

MR. HUEBNER: I mean, again, just like I can't

imagine a circumstance where somebody would say a utility needs to give back their deposit unless it was a preference or a fraudulent transfer, and in this case, frankly, we would be happy to defend the retainers on those grounds as well, Pillowtex (sic) ironically has made us all very careful and very thoughtful to ensure that we have appropriate mechanics in place well before the filing so that we can stand up and be unquestionably comfortable that we're disinterested which actually is a higher value, frankly, under the code for 327(a) counsel than virtually anything else.

And as Your Honor of course knows the U.S. Trustee does a very searching Pillowtex analysis before the filing and obviously was satisfied. This is the absolutely only issue that is open on the retentions.

THE COURT: Okay.

MR. SCHWARTZBERG: Good morning, Your Honor. Paul Schwartzberg for the U.S. Trustee's office. I'll beat Mr. Huebner and just bring up three points, Your Honor.

(Laughter)

THE COURT: Okay.

MR. SCHWARTZBERG: Unlike the normal case where there is a carve out, the reason there's not a carve out here is because there's no secured debt or virtually no secured debt. The debtor, according to their first day

declaration, has over a billion dollars of cash that is unencumbered.

On top of that, they're getting -- the professionals are going to be paid as per Your Honor's prior order today on them monthly where they're going to be getting 80 percent of their fees and a hundred percent of their expenses.

Based on that, which is the unencumbered cash is an unusual circumstance, we did not believe that the evergreen retainer was necessary in this case to protect the professionals.

THE COURT: Okay. I mean, it strikes me given what I think are the undisputed facts here that this dispute really isn't particularly pointed on either side. You know, it seems to me that the code doesn't have a requirement either way on this point. And the only case law -- and that -- I mean, I think there are two thoughtful decisions, the Insilco and the Hospital (sic) case, and neither of them really comes up with a bright line as to when it's appropriate and when it's not appropriate to have an evergreen retainer.

And, frankly, I think that given the various issues at stake, one could argue that it's more appropriate when there is financial risk. But on the other hand, if there's no financial risk to either side, maybe it doesn't

really matter. I mean, I just -- I just don't really see this as a particularly important issue for the case.

And since congress didn't really address it other than the notion that a prepetition payment needs to have been reasonable under Section 329, this appears to be reasonable to me. It's not -- you know, it's not -- these retainers are not out of line for the level of work that was being done and anticipated to be done.

We've clarified that their true security evergreen retainers, i.e. any surplus comes back. And I just -- you know, to me I don't think anyone's ox is really being gored here.

So I think what's really an issue is whether I should establish some principal that you can never get an evergreen retainer, and I'm just not prepared to do that. I don't think there is such a legal requirement --

MR. SCHWARTZBERG: I --

THE COURT: -- particularly given the logic of the Insilco case and the American Hospital case, which, you know, as I said, I think they're the -- they're clearly the two decisions that -- I'm sorry -- Pan American Hospital case, 312 B.R. 706 (Bankr. S.D. Fla. 2004) and then Insilco is In re: Insilco Technologies Inc., 291 B.R. 628 (Bankr. D. Del. 2003).

I guess ultimately here, and I know you hate to

hear this and I appreciate that the U.S. Trustee has a major role to flag issues. And sometimes when you flag issues other parties join in and sometimes they don't. But no creditor whose ox might be gored here is complaining. And I think that's a major factor, as well as I don't think there's -- this retainer creates a conflict with anybody ultimately.

And since it's not a 328 type of compensation, just 329 reasonableness, if there is some conflict down the road, and it's hard for me to imagine that there would be, I would balance the issue there and probably at that point the firm would -- the firms would apply their retainer anyway.

So I'm going to overrule the objection and grant the applications as sought.

MR. SCHWARTZBERG: All right. Thank you, Your Honor.

THE COURT: Okay.

MR. ROBERTSON: Good morning, Your Honor. For the record, Christopher Robertson, Davis Polk & Wardwell on behalf of the debtors. We're going to turn to the second contested matter. It was actually the first contested matter on the amended agenda at Item Number 14, the debtors' cash management motion.

There is one objection to the cash management motions from the United States Trustee. The U.S. Trustee

opposed the debtors' request for a waiver of the requirements of Section 345 of the Bankruptcy Code with respect to excess cash invested in two Goldman Sachs treasury funds.

We did, of course, work with Mr. Masumoto to try to resolve this matter consensually, but unfortunately we're not able to work out this issue with the U.S. Trustee's Office.

Before I move onto the motion, we filed supplemental declaration of John Lown (ph), the debtors' chief financial officer in support of the cash management motion. As noted on the amended agenda, the declaration is filed as Exhibit A to the debtors' reply at Docket Number 480-1. Mr. Lown is in the courtroom today, if anybody has any questions. If not, I would ask that the declaration be admitted into evidence at this time.

THE COURT: Okay. Does anyone want to cross-examine Mr. Lown on his supplemental declaration?

All right. I will admit it as his direct testimony.

MR. ROBERTSON: Thank you, Your Honor.

Your Honor, I do not intend to rehash every point we made in our papers. I would like to briefly explain why we believe that a requested Section 345 waiver is appropriate and why continued access to the Goldman money

market treasury accounts is important to the debtors' estates. Not that Your Honor needs any permission, but please feel free to interrupt me if you have any questions.

So why is this waiver appropriate? At a high level, Section 345(b) of the Bankruptcy Code provides that estate funds may be held in three ways: In investments or accounts insured or guaranteed by the United States or by a department agency or instrumentality of the United States; in investments or accounts backed by the full faith and credit of the United States; or with entities that have posted a bond or provided acceptable collateral as security for the deposit or investment.

The U.S. Trustee's main concern, as I understand it and it's voiced at page 2 of the objection, is that the debtors are asking for a fourth option; that is, the debtors are asking for the Court to set aside the safeguards within Section 345 in the interest of convenience, efficiency and cost.

And, Your Honor, the debtors are not asking for a fourth option or special treatment and we are not asking the Court to set aside any statutory safeguards whatsoever. As discussed in Mr. Lown's supplemental declaration, the debtors adhere to long-standing investment guidelines that only permit the debtors to invest in treasuries or in deposits collateralized by U.S. Treasury or U.S. agencies.

This is what I'm calling Option 2, Your Honor. You know, this is an investment backed by the full faith and credit of the United States.

The debtors are requesting to continue to invest in treasuries by investing in two treasury funds managed by Goldman Sachs. In other words, the debtors are seeking to comply with both the letter and the spirit of Section 345.

THE COURT: So I guess this was clarified for me in Mr. Lown's supplemental declaration. He states that both of those funds only invest in treasuries, U.S. Treasuries and can only invest in U.S. Treasuries. And obviously they're also rated at the highest level --

MR. ROBERTSON: That's correct.

THE COURT: -- of applicable rating I think probably in light of that.

So I guess -- I mean, that -- to me that largely ends the story. I don't know. He says that they monitor the cash. I don't know what that means. I guess they would pay attention if there's some press story about the funds and someone deciding to violate the securities laws and the funds' governing documents and move the treasuries into, I don't know, wingets (sic) or realles (sic), or something. I don't --

MR. ROBERTSON: Yeah. And not to belabor the point, and Mr. Lown can speak to it, but the funds publish

weekly statements that have, you know, every treasury that they hold. And so it's very easy to monitor these accounts.

THE COURT: Okay. All right. And, I mean, it is true, you are taking the credit risk of the fund as opposed to the underlying treasuries. But if the only asset in the fund and permitted to be in the fund is the treasuries, then they're essentially coterminous --

MR. ROBERTSON: Right.

THE COURT: -- other than the fact that the government can always print more treasuries and the fund can't get back anything that's let out by fraud.

But that same risk applies to a surety as well. You're only getting the credit of the surety, which congress recognized in Section 345 as a proper way to protect the estate, too.

MR. ROBERTSON: I agree, Your Honor.

THE COURT: There's no collateralization of what's in the fund for any of the investors; is that right?

MR. ROBERTSON: No. That's correct, Your Honor. There's --

THE COURT: Yeah.

MR. ROBERTSON: That's correct.

THE COURT: All right. Okay. So I interrupted you, but you can go on.

MR. ROBERTSON: No. I think that you covered a

lot of what I was going to say about the nature of the mutual funds and the debtors' investment.

You know, the last thing I would say and just to kind of reiterate the point and then I'll cede the podium is, you know, just to return to a theme I kind of touched on at the beginning. This is not a case where the debtors want to continue an investment program out of, you know, convenience or cost.

The alternatives that the trustee suggests, which is holding treasuries directly by purchasing them from the government or moving all of the excess cash into the deposit account, both of these are not viable and Mr. Lown provided testimony as to the difficulties the debtors would have moving cash into a deposit account. And holding treasuries directly creates a whole host of other operational and control risks that --

THE COURT: Well, that would be a much bigger control risk because --

MR. ROBERTSON: Correct.

THE COURT: -- only one person is authorized to have them. So unless you have that person under 24-hour surveillance, they're at risk of going somewhere.

MR. ROBERTSON: Correct.

(Laughter)

MR. ROBERTSON: And with that, unless Your Honor

has any further questions for me, I would --

THE COURT: Well, the money that -- the other cash --

MR. ROBERTSON: Uh-huh.

THE COURT: -- I just want to confirm, Mr. Lown says that all of that other cash is in an escrow reserve or a trust account that the party for whose benefit its posting is comfortable with.

MR. ROBERTSON: That's correct.

THE COURT: It's their collateral and -- or required by regulation or agreement to put in that account.

MR. ROBERTSON: Not for the -- for the $130 million that's held in trust accounts that are invested in treasury money markets it's essentially -- that's a different institution. I believe most of those are with Wells Fargo. But it's exactly the same structure as where the debtors have their cash at Goldman. So it's the same story.

THE COURT: And is it in any special fund or just at Wells Fargo?

MR. ROBERTSON: It's in -- I would refer to Mr. Lown, but my understanding is that it's in the treasury money market funds that are administered by Wells as posted by Goldman Sachs.

THE COURT: So it's just -- is it limited to the

treasuries again --

MR. ROBERTSON: Correct.

THE COURT: -- those funds?

MR. ROBERTSON: Correct, Your Honor.

THE COURT: Okay. He's nodding his head there behind you, nodding it yes. Okay.

All right. Very well. Thank you.

MR. ROBERTSON: Thank you, Your Honor.

MR. MASUMOTO: Good morning, Your Honor. Brian Masumoto for the Office of the United States Trustee.

I know Your Honor has addressed the specifics regarding the particular investments, and so essentially I would like to focus in on the area that our office has concerns with, which is we believe that the investment through a fund is not the same as holding the direct treasuries by the debtor and, accordingly, does not fit strictly within the elements under Section 345.

We don't have -- the U.S. Trustee does not have the authority to grant a waiver, and although one can argue about the various risks and so forth, it's not the U.S. Trustee's intent or responsibility to determine the soundness or the integrity of particular funds.

So from our standpoint an investment through the fund creates a non-compliance with the statute that can only be approved by the Court granting a 345 --

THE COURT: Okay.

MR. MASUMOTO: -- waiver.

THE COURT: All right. I mean, and that's fair. The statute doesn't -- what gives the trustee discretion is in 345(b)(1)(B), where the money is invested in a bond in favor of the United States secured by the undertaking of a corporate surety. So it does give you the discretion to evaluate the -- as the debtor says, approved by the United States Trustee. So it gives the -- your office the discretion to evaluate the credit worthiness of the surety, but not the particular fund where the bonds are held.

MR. MASUMOTO: That's correct, Your Honor.

THE COURT: All right.

MR. MASUMOTO: And one -- although there was -- and that's with respect to, I guess particularly the argument applies to the Goldman Sachs funds which have been discussed.

One thing that it was not entirely clear is with respect to the restricted funds. It wasn't clear to me. In Mr. Lown's declaration there were indications that they were held in I guess government obligations, and that's part of the problem. The Goldman Sachs fund -- well, it may be -- it may pose a problem. The Goldman Sachs fund where it's supposedly exclusively for a government treasury is at least from our experience relatively unusual because many

government fund accounts are not exclusive. I mean, it's usually a mixed bag of investments which may primarily be in government obligations, but not exclusively.

So it's not entirely clear to me whether the restricted funds are, in fact -- although I believe there was some statement that seems to suggest that Goldman managed some of those escrow funds, and if that's the case being exclusive, then the -- your ruling with respect to the Goldman accounts would apply.

But to the extent that those other funds, in fact, are not exclusive with respect to government obligations, you've increased the risk of those particular funds.

And accordingly, again, once again it would be Your Honor's discretion --

THE COURT: Well, he says the cash held in the various Wells Fargo accounts and the DLKF account are invested in money market treasury funds.

MR. MASUMOTO: Right. And -- but in many money market treasury funds as such, they're not exclusive. I mean, in our experience those so-called funds often have a mix. I mean, they may be primarily holding government treasuries, but not exclusively.

And so it's not, at least if that were the case it's not identical to the Goldman Sachs case situation where it's exclusively limited to government securities.

THE COURT: Okay.

MR. ROBERTSON: And, Your Honor, I think just one brief point. I don't -- I have a printout of every treasury held by the Goldman funds. I don't have a printout of every treasury held by the other restricted cash accounts. But I would just add that, you know, this is a very highly regulated industry and, you know, major institutions that administer treasury money market funds, you know, can't use that term, you know, loosely. There are regulations under the SEC and otherwise that, you know, specify what a treasury money market fund is.

So this is not a case where these funds are holding, you know, half their funds in treasuries and half in junk bonds.

THE COURT: And is this -- are these funds also monitored by the company on a weekly basis?

MR. LOWN: Absolutely.

THE COURT: Okay. Okay.

MR. ROBERTSON: Thank you, Your Honor.

THE COURT: All right. I have before me the debtors' request for final approval of their motion authorizing the continuation of existing cash management systems and maintaining existing bank accounts and business forms.

The motion is objected to by the U.S. Trustee in

one respect, which is that the debtors' investment of both unrestricted cash and restricted cash, i.e. restricted based on various agreements with third parties where the cash is being held in one form or another for their benefit is not being held consistent with Section 345 of the Bankruptcy Code. That section provides for specific ways to hold money of bankrupt debtors' estates for which no court ruling is necessary.

One aspect of it, which I've already quoted, does subject the United States Trustee to the exercise of some discretion in terms of evaluating a corporate securities -- I'm sorry -- corporate sureties' undertaking.

But it provides for authorization to invest money of the estates without court review if the money is invested in a deposit or investment that is insured or guaranteed by the United States or backed by the full faith and credit of the United States. And that obviously is limited for a company of this size given the amount of cash that we're talking about here, which is somewhat over a billion dollars, given the limitations on insurance or guaranties; or, alternatively, invested in the bond in favor of the United States secured by the undertaking of a corporate surety approved by the United States Trustee and conditioned on the proper accounting and faithful performance of duties as the depository.

However, there's a safety valve that congress enacted which provides that the Court may order otherwise.

I have the benefit of a recent decision by one of my colleagues, Judge Garrity, in In re: Ditech Holding Corp., 605 B.R. 10, (Bankr. SDNY 2019) analyzing the proper application of this cause exception which was enacted in 1994. Judge Garrity also relies on In re: Service Merchandise Company Inc., 240 B.R. 29 (Bankr. Tenn. 1999).

I agree with the trustee that technically I don't think these investment accounts necessarily comply with 345(b)(1). However, I actually don't believe that a hearing is necessary on it. If the parties conduct their due diligence and determine that cause should be warranted, they could submit an order on that basis to chambers, thus obviating the need for a hearing. I obviously read the underlying motion, so if I disagree with the proposed order and the finding it wanted me to seek, I would ask for a hearing.

But here the totality of the circumstances best applied by Judge Garrity and the Tennessee Court in Service Merchandise argues that I should find cause here to approve the investment. Among other things, the money is held in funds that are weighted at the highest level. The funds are, as far as I can see, allowed only to invest in U.S. Government treasuries.

The funds are also reporting on a weekly basis to the debtors and, therefore, the debtors will be able to review whether there is any issue as to the funds' management and the like.

Finally, and at least as important, the debtors really don't have reasonable alternatives here. It's just not a question for them of going down to a approved bank and putting their money in the bank because it's clear from Mr. Lown's declaration that they don't have that flexibility, both given the size of their cash position and the nature of banking in today's world where banks routinely say we don't want your money, which is not only a problem for companies like these, but also for individuals.

The only other alternative would be to hold the treasuries actually in the debtors' own possession or in the possession of someone who would be willing to do it and, frankly, I don't believe that that entity would have the type of control or credit support that the funds that are currently holding the treasuries have.

So there's clearly substantial harm to the estate of not getting this relief. Conversely, there's substantial benefit to the estate of getting the relief. And the calculus is, I think, here quite easy to determine that the motion should be granted.

MR. ROBERTSON: Thank you, Your Honor. And I

would turn the podium back over to my colleague, Marshall Huebner.

THE COURT: Okay.

MR. HUEBNER: Good morning, Your Honor. For the record again I am still Marshall Huebner of Davis Polk & Wardwell on behalf of the debtors.

Your Honor, one interim update since I was last at the podium, which is at 10:51 my partner, Tim Graulich, sent in to chambers copying all relevant parties the injunction order, which unless we are sadly mistaken, is ready to be entered and hopefully will give us all the respite aforementioned.

THE COURT: Okay.

MR. HUEBNER: Your Honor, I am obviously quite well aware that this hearing is going to be hotly contested on the one remaining issue on the agenda. But I also think that there are actually many factual and quasi-factual things that are not disputed.

One thing first, which is just in order of operations, and I hope I get this right. I think that the understanding and agreement with the objectors is that the O'Connell (ph) declaration will be admitted into evidence; that as of now I don't think people want to cross-examine him, and that the deposition that was taken yesterday will be admitted into evidence, may be into -- Mitch, how are you

--

MR. HURLEY: Sure. So Mitch Hurley with Akin Gump on behalf of the official committee.

We took the deposition yesterday. We got the final --

THE COURT: Of who?

MR. HURLEY: Of Mr. O'Connell.

THE COURT: Okay.

MR. HURLEY: The declaration that was submitted on Friday, we agreed to take the deposition yesterday so that we wouldn't have to push off this hearing. We got the final transcript this morning at 7 a.m. We want to save at the hearing and get right to the argument rather than doing live testimony. So we're okay with --

THE COURT: Okay.

MR. HURLEY: -- relying on the deposition. We unfortunately don't have pages to hand up to Your Honor because we got it so recently. If after the presentation the Court wants to see any of the excerpts, I'm sure you can work with Davis Polk to provide designations and counter-designations.

THE COURT: Well, okay. I -- as you know I normally rule from the bench. So I think you're going to have to at least quote to me what you think is worthwhile quoting from your deposition.

And I appreciate that properly so attorneys often designate a lot more in a deposition. But usually it's one or two quotes that actually make it into the ruling.

MR. HURLEY: Understood, Your Honor. We'll keep that in mind for the presentation.

THE COURT: Okay. Can I -- before you go further, Mr. Huebner, I got a revised proposed order --

MR. HUEBNER: Uh-huh.

THE COURT: -- the other day. Have there been any other changes --

MR. HUEBNER: No. No. And, Your Honor, I'll be walking through for the benefit of the Court in the course of my remarks the changes that are reflected in our provided revised order. There are no changes after that.

THE COURT: Okay.

MR. HUEBNER: So, Your Honor, it -- we take no joy, it goes without saying, in being adverse to the parties who are objecting today, the U.S. Trustee, the official committee of unsecured creditors and then the ad hoc committees representing individual victims, private insurance entities, NAS babies (sic) and Native American tribes.

Again, without saying more than I should, I think that, you know, it is probably fair to say we tried awfully hard to try to work something out that would obviate the

need for this hearing, but were not able to do so, and here we are.

So as I was trying to say, Your Honor, I think there are a variety of things that we're going to be talking about in the course of today that really are as much about judicial notice and common sense as they are about evidence. Judicial notice obviously is a concept that this Court is intimately familiar with, In Delphi Corporation, for example, 2009 Westlaw 2482146 at *20, Bankr. SDNY July 30, 2009 RDD, Your Honor took judicial notice of the docket of the entire Chapter 11 case:

"Including without limitation all pleadings and other documents filed, all orders entered and all evidence and arguments made, preferred or adduced, at the hearings held before the Court during the pendency of the Chapter 11 cases."

This has been done around the country by lots of judge -- by many judges in many contexts, including contested motions. I give only one example while the exampls are legion. Judge Gerber did a similar thing in the Adelphia, 291 B.R. 283, page 291 and note 26 (Bankr. SDNY 2003) where he took judicial notice of different things on his docket, specifically in connection with a 365 motion to assume or reject the contract.

So I'm going to begin, which is where I thought it

made sense to begin, by listing some factual things, some quasi-factual things, some things from the docket and some things that are just, frankly I think, common sense as much as testimony and hopefully, frankly, narrow the issues and dispense with some things along the way.

One, let there be no mistake. We all agree that the opioid crisis is just a terrible crisis and tragedy, and no one in this case -- and despite some of the language in some of the objections -- certainly, the debtors in their pleadings have ever minimized that or taken any position to the contrary. And nothing about today's hearing could possibly be read fairly to suggest to the contrary.

Two, as this Court knows because the Court has noted it to parties several times, one-hundred percent of the debtors has been unoffered to the claimants as part of their settlement framework, and now the term sheet since before the case was even filed, the remaining meta-questions in this case involve how to best maximize the debtors' value and assets and how and to whom to distribute them.

Three, we agree, every dollar spent during these cases is arguably a dollar that could instead ultimately go to help victims and ameliorate this terrible crisis. That is exactly why resources need to be spent carefully and thoughtfully, and the same questions or some variance thereof always need to be asked: Is this an appropriate use

of money; is it likely to enhance the value of the estate or accelerate these complex proceedings and ultimately increase the distributions to claimants. Those are the judgments that the debtors actually have to make, in fact, every day.

For example, the injunction hearings were very intense and very hard fought and, candidly, also quite expensive which is unfortunate. But as Your Honor recognized not getting the injunction would likely have diminished the estates by hundreds of millions of dollars or more, multiples and multiples of what the injunction hearings cost.

So the debtors expend, or when approval is needed seek authority to expend, resources when they believe that it will ultimately accelerate the case or otherwise ultimately enhance recoveries.

Four, the creditors' committee is a fiduciary for all unsecured creditors. Every single one. Notwithstanding that as I accurately noted on the first day of the case governmental entities who as of the petition date had filed 85 percent of the lawsuits then pending against the debtors cannot be voting members of the UCC per the United States Trustee.

This does not of course mean, and I'm not sure why people seem to keep trying to misquote us on this, that governmental entities will be 85 percent of the ultimate

claimants. Obviously that number is unknown and unknowable. There will be a bar date and claims will be filed, and we will figure out how to go through them in efficient, unusual and probably unprecedented ways. The 85 percent number was and is a simple and correct statement of fact as of September 15th, 2019.

Five, the creditors' committee has added a few governmental entities as ex officio non-voting members. Camera County, Texas, the designee of the multi-state group; the Cheyenne and Rapaho (ph) Tribes designed by the ad hoc group of 38 tribes as Your Honor knows in lieu of and subsequent to which they withdrew their motion for a separate committee.

While the debtors had nothing to do with these decisions and learned of them only afterwards, it seems like a fine idea to build a bigger tent at the UCC level with non-voting members to hear more voices and garner more points of view, including those of governmental entities.

But it bears noting, as Mr. Preis began the hearing, that while we were advised a few days ago that the State of Maryland was added as an ex officio non-voting member, we then recently learned either yesterday or the day before that they have since withdrawn their very short tenure.

So now there are no states on the UCC, neither as

voting members nor ex officio members, only two tribes and one county who are, of course, very important, but different in kind than sovereign states and, of course, have no vote.

Six, 47 State Attorneys' General, 47 of the 48 that are participating in this case, virtually all of whom believe that they have meritorious lawsuits against Purdue and related parties that they believe could or should proceed notwithstanding these Chapter 11 cases because of the police power and regulatory exception to the automatic stay have now all agreed, hopefully until April 8th, but at the very least until December 19th or February 21st to work together to try to move these cases forward productively and avoid what I think all agree would at its worst be a destructive complication of litigation.

The 48th state, Arizona, has also agreed, but for their reply brief which they have now filed. So I think -- their Supreme Court reply brief that we discussed at the last hearing. I think 47 is now -- we're 48 for 48.

Seven, states are sovereign governments. Each is charged with the solemn duty of protecting its citizens. And in the constitutional system of the United States of America, the states play a unique role. Principals of federalism on which our government is based give the states powers and responsibilities superior to their political subdivisions and distinct also from those with the federal

government.

And as this Court knows very well, the states were zealously using their police and regulatory powers to pursue these debtors and related parties prior to the commencement of these Chapter 11 cases.

Eight, these sovereign governments, each represented by its most senior legal officer, are highly unlikely ever to agree at the UCC that they did not select and on which they cannot vote or sit except possibly as observers, and as of now that number is zero, is their primary voice or agent or proxy in these cases. Even though under federal law the UCC cares about them just as much as it cares about all other unsecured creditors, it's just not going to happen. The states have been very clear and very consistent about this from the moment these cases were filed.

Nine, the probability that this company will be able to emerge from Chapter 11 or optimize its ability to do good for this country post-emergency without the support of a very substantial number of state governments as I stand here today seems to me to be quite remote.

This is not to say that we will not also be seeking the support or non-objection of and that we will not be working to build consensus with a great many other claimants, both private and governmental. But the simple

reality is that the rights of sovereign states with respect to both the debtors and maybe more importantly the related parties are just different in kind than the rights of others.

Ten, we indeed signed a fee letter with the ad hoc committee of supporting states and other governmental entities on the eve of filing. In fact, I'll go better, on the very eve of filing. But that's because we had for months been building support for the settlement framework state by state up until the very eve of filing. And that deal included a fee concept which, as Your Honor knows quite well, is not unusual at all.

In fact, we filed for Chapter 11 when we did precisely because we had reached agreement on a settlement framework with this important group, a deal that was and absolutely positively remains critical to these cases and their probability of success.

The notion of filing Purdue Pharma for Chapter 11 with no deal and no framework and no structure and no supporting entities in hand and at the same time coming before Your Honor with a request to freeze thousands of lawsuits brought by governmental entities, many of whom passionately assert and asserted at the hearing the police and regulatory exemption from the automatic stay was a proposition somewhere between daunting and terrifying.

Eleven, the supporting states have done since the petition date what they said they would do. At no small cost and risk they supported us at the injunction hearing opposite an equal number of passionately opposing states. And this followed many months of work towards the deal that we believe maximizes the value of these estates to which they stepped up when no other party was willing or able to.

The ad hoc committee also reached agreement with us on a term sheet to put substantially more meat on the bones of this continuously developing deal. As Your Honor knows, that was October 7th, filed on the docket I believe three days before the October 11th hearing. And since then they and their advisors have been working to advance in diligence and yet further flush out the deal, all of which are preconditions for all parties in this case moving to the next phase.

The ad hoc committee and the debtors exceeded to the demand of the UCC in the days before the October 11th injunction hearing that we not proceed with an RSA on the schedule originally contemplated with the ad hoc committee. But rather that we slow it down all the way until April, a promise that was in the originally filed UCC stip filed at approximately 9:15 a.m. before the injunction hearing began and that Your Honor referred to earlier today, and those provisions are unchanged in the amended UCC stip.

Twelve, Sections 327 and 328 of the Bankruptcy Code, as we also actually discussed coincidentally a few minutes ago, apply only to professionals retained by debtors and official committees. Candidly, I was extremely perplexed to see those sections of the code referenced in certain of the objections as a path that we should have pursued since I believe that they are so obviously utterly inapplicable.

Thirteen, as I hope the Court and all parties know, the debtors are working extremely hard and in good faith to do and advance what they believe is in the best interest of these estates and stakeholders. To that end, after the motion was filed and we began hearing from parties and seeing objections, we went back to the ad hoc committee and suggested and ultimately agreed to a raft of changes to the order that are actually quite important.

One, we eliminated the requested authorization to amend the reimbursement agreement without further court authority. Done. It's out. All that's being approved is the letter as it stands.

Two, requiring the ad hoc committee's professionals to follow the same compensation procedures as the professionals of the debtors and the UCC, including, one, submitting fee statements that comply with the U.S. Trustee's fees guidelines; two, publicly filing fee

statements rather than providing them only to the debtors, the UCC and the trustee; three, submitting monthly fee statements and applications; four, providing for interim fee hearings, objection deadlines and the resolutions of objections all as defined in the interim comp order; five, unless I'm miscounting which is possible, providing for a holdback of 20 percent of the fees until such amounts are approved following quarterly applications; six, conditioning the payment of fees to Compass Lexicon and Culture Injustice, two of the three financial advisors upon subsequent court approval pursuant to a request therefore in a monthly application.

Let me just explain. They're not currently at work. And so we said, well, if they're not at work, rather than having it look like we have three FA's, right now they have one FA. And so if they end up needing either of these two firms to start again, they can't get paid at all until the next quarterly fee app or they need to come and explain to the Court why they restarted and seek their fees at that time. So we're not really down to one FA is all that is actually de facto being approved today.

I'm going to stop counting because I didn't number these which is a mistake. Expressly providing that people can object, and it's anybody. And that's actually pretty important. All the people who are very angry today are all

wearing the uniform of guard and cross-checker and police person, right, because there are multiple grounds on which the ad hoc people acknowledge that their fees can be objected to: Are they not reasonable and documented, are they duplicative of the work of other ad hoc committee professionals with one another; are they outside the scope.

And we'll now have full bright sunlight and whoever is fussed can raise their issues with the Court and the fees will have to be defended. And I'm also sure that with all that sunlight we'll also probably be seeing things that, you know, hopefully fit comfortably within the rubric that the debtors and others expect.

Next number, and this is important, clarifying in the order that neither objecting to the claims of other creditors or advancing or prosecuting the claims of members of the ad hoc committee is considered within the scope. That is outside the scope and we will not pay for that, period.

Next, capping the amount of prepetition fees so we have some certainty and in a number not to exceed 1.5 million, and further agreeing that they can't actually seek or be paid for that at all right now. But that actually has to wait for either an RSA or a Chapter 11 plan.

Next, clarifying that there will be a new motion and order to pay the fees or have them retained and have the

debtors pay for -- they can retain whonever they want. The question is are we paying for it -- the fees and investment banker unless the UCC, the U.S. Trustee and the debtors all consent. Otherwise we have to come back to court and people can make their arguments as to why either the need for it or the compensation structure is or is not professional -- is or is not, excuse me, appropriate.

And then finally providing that the work product of certain financial professionals, primarily FTI which as of now is the financial professional, will be shared with the ad hoc group of non-consenting states and governmental entities group subject to appropriate protections. More on this very important change later.

Fourteen, without -- now I'm back to the main ones, not the mini-points on the order.

(Laughter)

MR. HUEBNER: Those I did number. There are only 16 of them.

Fourteen, without in any way minimizing the importance of other parties to the case, neither the UCC nor any of the other private or governmental entities or existing ad hoc committees, the states have a vital role to play. Your Honor has noted this from the bench multiple times since this case started.

During the October 11th preliminary injunction

hearing, and nobody needs me to remind the Court and you certainly need me least of all, although no one had actually objected or provided language to the voluntary self-injunction, you told us, go back and work this out with the states and get their -- get them comfortable and then come back.

Your Honor also, and I have pin cites for the transcripts if anybody needs them, Your Honor emphasized the need for the debtors to provide the states with more information, implicitly before coming back as we did on November 6th.

Your Honor also addressed preliminarily some musings on the allocation process and hoped that:

"There would be an understanding between the states and the municipalities and localities throughout the whole process that subject to general guidelines on how the money should be used, specific ways to use it should be left up to the states and the municipalities with guidance from the states primarily," 175-24 to 176-6.

Finally, as to the lengthy October 11th hearing, Your Honor expressed hope that once the difficult allocation issues were addressed the actual public health steps taken to correct and address the opioid problem would be "largely left up to the states and municipalities so they can use their unique knowledge about their own citizens and how to

address them," 149-22 to 155.

Then we came back on November 6th. And after Your Honor commended the parties on the progress in the case to date, which was very nice of you by the way, the Court emphasized that "Everyone here, including the consenting states...needs to be thinking about...what I believe will be a fairly neutral structure for a plan here." In fact, the Court's final reflections on these plan issues was to encourage all 50 states and the District of Columbia and the territories and the Native American tribes to be a resource and that "Each state reach out to the claimants in its state and start discussing this crisis" -- crisis we added, you just said this -- "to see if there's an equitable way that the claimants within the state can get comfortable with how it can be addressed," 57-10 to 13.

I actually have a few more quotes, but I'll leave it at that.

Fifteen, we are most assuredly not agreeing to seek authority to pay these fees as a thank you present for supporting us at the injunction hearing, even though that support likely significantly contributed to us prevailing, an outcome that hopefully is already avoiding value losses and will ultimately avoid value loss and expense many, many multiples of the fees in question.

We are not doing it because we like the ad hoc

group more than we like other creditors or groups. We're doing it because we think it is in the best interest of the estate.

And while I'm discussing the debtors' judgment, which is what lead to this motion, the UCC cited in their brief to several transcripts from Your Honor where Your Honor appears to have articulated a less deferential business judgment standard than that applied by many other courts.

Other people cited the Second Circuit case in Orion, which seems to have kind of a slightly different articulation of the Court being an overseer of the wisdom of the debtors. It actually specifically says that ascension motions should not be mini-trials. They should actually be sort of summary things that move the case along quickly.

And then the ad hoc committee cited a Supreme Court case from six months ago tomorrow where the Supreme Court states that when a debtor seeks to assume or reject an executory contract "the Bankruptcy Court will generally approve the choice under the deferential business judgment rule," Mission Product Holdings Inc., This Is Technology LLC, 139 Supreme Court 1652, 1658 (2019).

It is not for me and I will not be doing it, to tell the Court what standard to apply today. But happily it is of no moment because the debtors believe that under any

of the standards the Supreme Court's potential deferential business judgment, Orion's overseer of the wisdom or even the transcripts that they found that seem to suggest that you kind of look at it de novo, you know, we are very comfortable with the request relief and the judgment and the complexity that went into it is in the best interest of the estates and should be approved.

Finally, sixteen, as I have told many parties and I believe the Court in some cases more than once, the debtors have long viewed this as a four-gates deal. Gate One was agreeing to a settlement framework with a critical mass of parties. Check.

Gate Two was memorializing that agreement in more detail in an actual written term sheet. Check.

Gate Three is moving to an RSA stapled to a much more flushed out version of that deal and term sheet whose preconditions are massive amounts of diligence, structuring and negotiation. That work has been progressing intensely in the window created by the initial stay period.

And Gate Four is the confirmation hearing where, if all goes well, that deal is authorized to close and will close.

Therefore, I was in no way surprised or fussed or embarrassed to see my own words from this very podium about where we are at present with much work still to be done and

uncertainty about ultimate outcome cited back to me at some length in some of the objections.

Quite the contrary, we have been completely direct and very forthright with all parties about both exactly where we are and exactly where we are not yet. The debtors believe that progressing the deal set forth in the term sheet is critical and that it is absolutely in the best interest of the estate to continue with the diligence necessary to move this case towards Gate Three.

And that diligence and the work that we need to do in the months ahead is extremely substantial whether or not we pass exactly through the Gate Three whose structure is outlined in the October 8th term sheet or some slightly different one. It includes questions like, how much are the IACs worth and should they be prepared for sale; how do we establish appropriate security interests and covenants with respect to the Sacklers and the IACs; how do we get the most money into the estate the most quickly; exactly which Sacklers are guaranteeing the $3 billion minimum contribution and how will payments be allocated among them; what covenants and protections do we get from a far flung family for a multi-billion-dollar multi-year deal; how much are the Sacklers worth and where are their assets.

As these questions and dozens and dozens of others make clear, there are huge amounts of work to be done on

this hugely complicated multi-billion dollar, multi-continent, multi-country, multi-year deal or whatever variant of it we end up with that presumably will still include billions of dollars paid in from the shareholder parties.

It is in light of all this that it is and remains the debtors' view that three entities each need to be deeply and primarily involved in pushing us all forward, pushing the family, the shareholders, for diligence, disclosure, granularity, covenants, collateral and other protections. These three parties are:

One, the debtors, the ultimate fiduciary for all, and the indisputable owner of billions of dollars of potential claims against the related parties;

Two, the UCC, an undisputed fiduciary for all unsecured creditors; and

Three, the states who along with other governmental entities are participating via one of the ad hoc committees, the UCC itself, or the non-consenting states group and with whom the ad hoc committee has agreed to share substantial financial information analysis produced by their financial professionals.

At the end of the day, Your Honor, I think there is one core question for this hearing and it's not actually particularly evidentiary: Is it acceptable business

judgment for the debtors to pay the fee for this third party. It's expensive. It might be duplicative. And are they really doing anything that the debtors and the creditors' committee cannot do themselves, and why should the estate spend what might end up being tens of millions of dollars on that.

It's a fair question, but the debtors believe that the answer is better than the question. At base, it is the debtors' informed view and judgment having lived these litigations and other related matters for years that the states have power and negotiating leverage and sovereign rights that they alone can wield against the shareholder parties in addition to the rights and leverage and claims and threats of others.

Moreover, unless the supporting states get all the information they need from the related parties to proceed through the next gate, they will neither continue with the deal themselves nor be willing or able to bring any other parties on board or to undertake the various tasks that the Court has suggested to them might be quite critical once we get to the implementation phase.

Simply stated, the debtors believe -- and this is really counsel and judicial judgment more than witness testimony -- that this case will be resolved faster and better if today's request is granted. If the states are to

play the meaningful role that this Court often sua sponte has raised and suggested, they of course need to be comfortable and fully informed as to facts, options and structure.

As everybody knows, Purdue and the Sacklers and the opioid crisis are issues that are very, very public and very material and very controversial in many states. And those states have been abundantly clear that other entities that they have not chosen and whose boards they cannot vote whether or not they are fiduciaries will not be doing that work for them.

Moreover, the irony of this hearing is worth a moment of digression. The debtors unfairly and wrongly have repeatedly been accused in the press and by certain parties in these cases of trying to protect the Sacklers or trying to inappropriately use the debtors' bankruptcy as a shield for the Sacklers.

While all of that is emphatically false and happily is materially dying down as weeks and weeks of fact on the ground give it the lie that it is, what the debtors are here today trying to do is further empower a large number of State Attorneys' General. And, indeed, all of them, because of the information sharing to which they have agreed, the debtors are seeking to underwrite the very entities who have been their most fierce, their most

bitterly antagonistic and their most long-standing litigious stakeholders because the debtors believe that that will get us all to consensus better and faster.

Moreover, Your Honor, if you want to think about it from a different angle, you could really argue, although it's not actually what animated us today, that this motion is, in fact, a very fair trade for the injunction willing (sic) because the states alone have police powers that are potentially not automatically stayed.

But this Court ruled, over the fierce objection of 24 of them, that they do not in this unusual case get to continue their extent police and regulatory power litigation in their own preexisting courts of choice because we correctly prevailed in arguing that that would have been insanely value destructive for all.

So perhaps another reason the motion should be granted is that as part of being compelled to proceed in a unitary organized fashion in this one court, they get assistance in their efforts to work towards a solution in the common interest. And if this is part of the bargain that net avoided hundreds of millions of dollars of expense and fees and lost value, it seems pretty sensible.

Your Honor, those are the 16. Let me now switch gears and come at things from two more angles.

Number one is the O'Connell deposition. So like

others, I, you know, sort of opened my bleary eyes and went through that little mini four on a page transcript. And I'm going to guess that there are probably a few things that the people who took the deposition are pretty excited about, or maybe a little excited about. Since I actually lived all this, I actually don't think it's exciting at all. So since I'm at the podium I'm going to take a few minutes to address some of that.

One of the things that came up in the deposition was that Mr. O'Connell did not know and had no answers or I -- if he had them I don't think they were very good -- as to why if the supporting states were supporting us on the injunction that was not laid out in our informational brief and was not even in our initial injunction papers. Like if they were your big supporters and that was always part of the deal, where is it in the documents. A totally fair question. Since Mr. O'Connell is an investment banker, it's not a huge surprise that he didn't know the answer.

I'm not an investment banker and I do know the answer, which is the way it was supposed to work was we were supposed to go into Chapter 11, finish a term sheet, know that we had a deal, and then we would proceed with the injunction and they would be supporting us. Unfortunately, as Your Honor remembers perfectly well because we had some pretty sharp exchanges with some of the states about it,

some of the states took the bankruptcy filing as the acceleration gun.

And what happened as soon as we filed was that we were getting literally battered, just battered multiple times a day with emergency hearings and sua sponte orders and deposition notices and things like that. And we simply couldn't survive and wait to proceed with the injunction. So we ended up radically accelerating the injunction papers being filed. People like didn't go home from the Sunday we filed for Chapter 11 until I think it was the Thursday maybe that we filed the injunction papers. We didn’t have a term sheet yet. We had to flip the order.

And the supporting states said to us, we know we said we would be supporting you, but right now all we have is this three-bullet oral settlement framework. When we finished the term sheet, that's when you'll see our support. So the second we got the injunction papers filed, we went back into the chamber with them and worked on the term sheet, which was ultimately agreed to on October 7th and filed on October 8th, and about like a minute after that they filed their statement of support for Thursday's injunction hearing.

It's actually, frankly, a lot like what we did with the creditors' committee, which actually the minute we finished that one on October 7th we dragged ourselves into

the next conference room and the committee said, you know, we're not going to take a position supporting you on the injunction until you reach a stipulation with us. And that wasn't even done until the Friday morning of the hearing, and then moments later I think they called the Court and said, we're going to be supporting the debtor on the injunction.

So there's no Perry Mason moment there. The reason you didn't see the supporting committee -- the ad hoc committee support is we just weren't done yet and they were saying, finish the term sheet so we know that we actually have something that is, you know, much more flushed out and real, and then we will step up.

And just for what it's worth, lawyers shouldn't testify, but this kind of bugged me a little bit. So one of the other things I did in the middle of the night last night was I actually went back and looked at the earlier drafts that we had been sending them pre-filing starting in August and every one of them of course, because it was the core of the deal, says you will support us at the injunction. You will fully stand down.

So I'm hoping they're not going to say, like we didn't think to ask for that till afterwards and we agreed to pay their fees not having thought about it because that would actually be both actually insulting because they're

actually making me a moron, and it would also be, in fact, totally false.

(Laughter)

MR. HUEBNER: Two, there seemed -- you may hear later, Your Honor, about some kind of blocking position testimony from yesterday. There appeared to be a brief flurry of what looked to me in a blurry eyed as sort of excitement that, you know, did these guys have a blocking position, like do they own 33.335 percent of the debt. And the answer is, we have no idea because nobody knows that, like is that a Perry Mason moment?

Look, in a totally simplistic case with a known quantum of debt, where you can calculate percentages, people buy 34 percent of the debt have a blocking position and sometimes they get maybe more than they should deserve because of that.

But happily for us those of us in the room and especially those of us in a robe are infinitely more sophisticated than that. There are lots of ways to have leverage in a case. There are lots of ways to have a blocking position in a case. We weren't litigating the police power injunction against private entities. We were litigating against governments. We weren't here on November 6th figuring out a way to get the injunction consented to with private parties because they're automatically stayed.

On April 8th when I doubt we will be done with this case and we need an injunction extended, we're not going to be begging the private parties because, candidly, they're automatically stayed and they will file claims and we'll go through them. Governments are just different. And when it comes to police power and regulatory -- by the way, at subsequent hearings I may be saying they're very unimportant. Let me just be very clear about that. I just want to be up front.

(Laughter)

MR. HUEBNER: I know you don't like when people reserve their rights. I'm reserving my rights to say they're not as important as they think they are when they disagree with us. Okay.

(Laughter)

MR. HUEBNER: Next, another thing they seemed excited about, isn't it true, Mr. O'Connell, this is like from a TV show, isn't it true that RSA parties often provide financing to debtors or consent to the use of cash collateral. Yeah. Like it's true. When that's the nature of what is at issue in the case and when a debtor is running out of money and can't pay its bills and needs financing, that's the trade. When a creditor has a lock on cash collateral and you can't use a penny of your own cash without their consent, that's the trade. I just can't find

a Perry Mason in this one either.

Different parties in different cases bring different things to the table, both guns they put away and guns they choose not to use. And so, yes, in a typical plain vanilla intellectually and analytically uninteresting RSA in a simplistic capital structure, the trade is often for new financing or cash collateral consent. That's just not the trade that these debtors needed. We don't need a DIP loan and nobody has cash collateral. They have lots of other things which Your Honor doesn't obviously need me to elaborate on.

The last kind of Perry Mason moment, which wasn't, was when they showed Mr. O'Connell a one-page piece of paper that purported to be a Chapter 11 budget. Mr. O'Connell, and I think what they were saying was this has a lot of money on here for these ad hoc people, but doesn't even have as much money as they get for the UCC, like, explain.

Again, you know, they will describe it and Mr. Kanesty (ph) will help because, you know, I don't -- I'm not like perfectly conversant, but my understanding both at the deposition and then last night was that this is a completely outdated piece of paper from June that probably never -- I don't even know if it should have been put in the data room. And this was one of the many iterations of the budget that was done over the many months. Obviously, November 19th --

my sister's birthday -- is actually very far away from June in the life of a Chapter 11 case and there are many things on there that have no relevance at all and are clearly totally outdated and irrelevant.

So, you know, again, obviously I will leave it to them to advocate for what they got out of yesterday's deposition. But, you know, I sort of jumped on it as soon as I could and I didn't really see very much that I thought was too awesome.

Okay. So now I want to do one last thing. There are three arguments that were made in the papers that I actually want to hit quite directly which I think hopefully will be helpful to the Court.

One, there is no signed binding RSA. It has surface appeal. Your Honor, look at the term sheet. It's not even signed. The only thing these guys and ladies ever put their signature to was their fee letter. Show me like an actual signature of anybody other than on the fee letter. This is outrageous.

Yeah. It's actually not. In fact, I actually find it singularly unpersuasive.

One, as this Court well knows probably better than anyone in the room, no RSA in fact truly and irrevocably binds its signatories. In fact, RSAs invariably have multiple outs. And as Your Honor has seen for decades, they

not only have multiple outs, they often have multiple broad and discretionary outs, like the plan and all plan documents and every other document in the history of the universe must be acceptable to us in our sole discretion, or they have milestones like you will file a plan by Thursday.

And things like that, every one of them is a discretionary out. And Your Honor has presided over God knows how many cases where milestones got extended again and again and again, or courts said, I'm not going to approve those milestones. You know you can't make those and you're just giving them a hidden discretionary out.

So I think that the objectors' focus on the absence of a signed RSA is pretty close to a full on red herring because RSAs are very often of gossamer spun.

Rather, I would suggest that the ad hoc committee has been and has acted bound to this deal to date as least as much as a distressed bondholder is bound to a deal under a traditional and highly porous RSA.

But don’t take my word for it, Your Honor, because we actually went back and pulled a whole bunch of RSAs where our colleagues at Akin Gump were getting their fees paid as counsel to ad hoc groups or creditors. And guess what? Those RSAs consistently have broad and varied termination rights and outs based on documentation consent, milestones and even diligence outs.

So the notion that wonderful, magical RSAs bind ad hoc committees and that is what justifies their fees being paid, and only these foolish Purdue debtors forgot to bind their ad hoc group is respectably farcical. Most RSAs have multiple holes large enough to drive a truck through and very often bondholders exit through those holes after getting a whole bunch of fees paid.

Two, in this case which does not actually happen very often it is the debtors who have total unmitigated unqualified optionality. We can terminate paying the ad hoc committee's fees at any time for any reason, period. If Purdue concludes that it is no longer in the estate's best interest to pay these fees, we send them a one line email: Dear Ad Hoc, it's over, the debtors.

Now that's pretty rare and it actually explains we're not actually fool hearty at all. We signed the fee letter pre-filing knowing that it was about to become a pre-petition, unsecured, unassumed and unenforceable contract, and we would then make the judgment if we got to where we needed to go to file an assumption motion. We then had the injunction hearing and got the term sheet done and saw the facts on the ground and made the decision to proceed.

But today doesn't actually lock us into anything. It authorizes us to pay their fees for only so long as we see fit.

In addition --

THE COURT: How can -- can I -- how does that tie into the new provision that says the capped prepetition amount is tied to the earlier of an RSA or a plan?

MR. HUEBNER: Sure. That's a great question, Your Honor.

So I would say it like this. I'm just a little bit on my feet because it wasn't addressed specifically. But if we terminate before getting to an RSA with them, it never gets paid.

THE COURT: That's clear. Yeah.

MR. HUEBNER: If we terminate before getting to a plan with them, it's never paid. I guess your question is what if we terminate and then later we end up doing a deal with them even though they can't get paid for anything in the interim, can they submit a bill for $1.49 million for their prepetition.

You know, I don't know, candidly.

THE COURT: I mean, in practical terms you probably would have it in that deal.

MR. HUEBNER: Yeah. Well, I didn't want to be cheeky, but I was going to say if we end up getting to a global deal later and there is an interregnum, I'm pretty confident there's going to be a larger discussion and a resolution of what happens with the fees, which by the way

is perfectly consistent with even Akin Gump's own pleading which is like, come back when you have a deal and then we'll be much more favorable. We acknowledge we get fees paid like this all the time. The question is just do the facts justify them.

So I'm getting -- like -- let me say this. If our worst problem is figuring out what to do with this 1.49 million when we're otherwise all singing Kum Ba Yah, we're in a pretty fabulous place and I'm sure we will figure something out.

What I actually thought you were going to ask -- and shame on me for guessing wrong -- is if you have a flat unconditional right to terminate, why do you also have a right to terminate if they become less representative or if they don't do an RSA by a date certain. Like if you have a flat one, why do you have extra ones.

The answer is because they are statements of intent that are important to us. Even in this -- at the time on September 15th totally optional fee letter, this was a let us be totally clear, if you (indiscernible) are not the representatives that we thought you were or you're not moving towards an RSA with us, let there be no mistake. So those are just additives to a total discretionary at any time termination right.

Three, while there is in fact not yet a signed RSA

and there also isn't a signed term sheet, because candidly, you know, we thought about doing a heads of agreement for the term sheet. I've been through this rodeo before. They're just kind of foolish because when a term sheet itself -- maybe not much more foolish, ironically, than RSA which has a ton of outs.

When a term sheet itself still has lots of TBDs as term sheets always do, you know, you could slap something on that says, you know, we all agree in good faith that we will pursue this term sheet. And it's worth something. Filing it on the docket as an agreed term sheet, filing a pleading a few minutes later which they did -- I don't remember if it was a few minutes, but soon thereafter saying we have agreed to the attached term sheet and because of that here is our objection to the injunction, standing up against the other half of the country at the hearing and saying, we stand down and we actually support you being bound, I actually think that those facts on the ground are much stronger evidence of support than a piece of paper on a porous RSA.

We're also, though, just to leave no stone unturned, progressing a stipulation with the ad hoc committee that, in fact, will have a variety of covenants and agreements a lot like the UCC stipulation which, again, will be yet another thing that looks a lot like an RSA and will add even more to this sort of package of commitments

from the ad hoc group.

And let's not lose sight of sort of the slightly bizarre twist from today's hearing. The UCC -- and I understand why they did it because they're not on board with the deal yet and that's totally fine. They shouldn't be. They were -- had been formed a week earlier -- demanded as part of their October 11th stipulation that we adjourn for four months, the time table we were originally on, to sign an RSA that took us to Gate Three with the ad hocs.

Now they're saying, you don't have an RSA. That's an outrage. You can't pay their fees. Well, it kind of seems like a little bit unfair to do both of those things.

So, look, nobody knows, nobody, certainly not me, where this case is going to end: Will it be the exact deal on the term sheet, a variant or improvement of the deal on the terms sheet, or a different deal. And if I got up and tried to say, the deal on that term sheet, see you at the closing, you would think I was either delusional or a mendicant.

But what I do know is that the substantial work that has been done to date and needs to be done many hours a day almost every day for the next few months by each of the UCC, the debtors and the ad hoc committee and other parties as well for sure has been and will continue to be essential to progressing these cases.

Your Honor, as a reminder, RSA stands for restructuring support agreement. Let's just take those for a second. I'm guessing we can stipulate that we're in a restructuring.

I think judicial notice is pretty clear and I don't think it could possibly be disputed that we have gotten substantial support from the ad hoc committee to date, both in terms of the injunction hearing and the term sheet. And if we don't keep getting the S for support, we will stop paying their fees, period.

A is for agreement which, again, when you combine the fee letter, the term sheet, the injunction pleadings, their positions in court and the coming stipulation, we think that that three-dimensional agreement is actually worth at least as much as many of the Swiss cheese two-dimensional agreements that are actually called RSAs.

Argument Two, and I'm only addressing three, the ad hoc committee lacks fiduciary responsibilities to the estate. The UCC and the individual objectors both argue that the payment of the ad hoc committee's fees is inappropriate because they are not a fiduciary to the estate.

I just don't get this one. We all understand and agree that they're not fiduciaries to the estate. Nobody has ever suggested to the contrary. That's just not the

test moving to approve the fees of a creditor under 363 or 365 or 503. Creditor groups other than UCCs never have fiduciary duties to the estate or all creditors. Although strangely enough, this may be the first case in history where the ad hoc group actually, may actually have fiduciary duties to almost everybody because they're all 48 of the 50 states -- well, 47 because Arizona is sort of solo right now -- and they actually are the representatives --

THE COURT: What are the other two?

MR. HUEBNER: What's that?

THE COURT: What are other two?

MR. HUEBNER: Kentucky and Oklahoma who have --

THE COURT: Oh, they have their own deal.

MR. HUEBNER: Wait. Did I misspeak?

UNIDENTIFIED SPEAKER: No. That's right.

MR. HUEBNER: Yeah. Thank you.

(Laughter)

MR. HUEBNER: I would like to thank the peanut gallery for that --

THE COURT: Because they had previously settled.

MR. HUEBNER: Yes. Exactly.

THE COURT: Okay.

MR. HUEBNER: I don't want to over speak for them. We certainly did a deal with Oklahoma in the months before the filing. I believe there was a deal with Kentucky, but I

don't want to ever be viewed as speaking for a state government.

THE COURT: Okay.

MR. HUEBNER: So, you know, these sovereigns actually kind of are fiduciaries for at least 48, 50 or so of the United States. So they're actually fiduciary-like even if they're not remotely fiduciaries the way that the debtors and the committee are.

I'm going to skip some stuff because I'm talking a lot, and let's go to Argument Three.

The debtors' request will result in unlawful disparate treatment of similarly situated creditors. The UCC and individual objectors and other parties have also objected that this is unlawful because of disparate treatment.

I'm going to be quite brief on this one. The debtors' motion plainly has nothing to do with the ultimate treatment of unsecured creditors under a plan. Rather, the debtors' motion seeks authorization to use estate funds in a way that we believe is helpful for all.

The objectors do not, and frankly they couldn't because there is no case law that says that, cite to a single case in support of the notion that paying professional fees to a group of creditors during a case is unlawful disparate treatment. And Akin Gump is actually

pretty lucky that there is no case law that says that.

Quite the contrary, they expressly concede that paying such fees is permitted in various circumstances including under 363 and 365. The only question is, is it justified under the facts. So it can't be both categorically unlawful as disparate treatment and totally okay as long as it's justified under the facts at the same time. Right. You can look at their footnote that has all the RSAs that they honestly cite and say this is done all the time if the circumstances are right.

But here's the kicker on this one. The ad hoc committee is not getting paid on the prepetition claims of each of its ten members. It's getting paid for the committee's post-petition work in advancing the ball for the large group that they speak for and with their information sharing hopefully advancing the entire case.

And let me say just one semi-last thing from a totally different angle. I want to engage in the following thought experiment because it's actually quite important because it's actually a thought experiment that was urged on us by people.

Assume for a moment, Your Honor, that right after we won at the preliminary injunction hearing we turned to the supporting states and we said, thanks so much for all the support at the injunction hearing. That was really

terrific of you and we might actually not have prevailed without you. But now that you did that, we're actually not going to honor our prepetition agreement with you because it's unenforceable because we're in Chapter 11 now, and we're not going to seek approval to pay your fees. But thanks again. Now can we sit down and meet about how to progress these cases and get a deal done.

We believe that this perfidious breach of trust may well have made any consensual deal not only with that group, but with many other parties as well in this case impossible because this is a uniquely difficult case. And our credibility and our integrity are among our most valuable assets. When we give our word, we keep it. That's also part of business judgment.

Moreover, while it is not the governing provision here, the debtors believe that the relief we are seeking, in fact, is quite consonant with the policies underlying 503(b) because the ad hoc committee is working to grow the pie for all; the stand down of their own litigations that preserve estate value for all; the commitment to pursue a value-maximizing structure for a global resolution; assisting to secure at a minimum a $3 billion contribution with upside from the shareholder parties. All of this work is being done while the ad hoc committee has no idea what the ultimate allocation or percentages or recoveries of their

own members might be.

So, Your Honor, in conclusion, and now this is in conclusion, I think the record more than demonstrates and the debtors firmly believe under any level of deference or lack of deference or standard of review that the reimbursement agreement will benefit the debtors' estates for the many important reasons I have discussed.

Six months ago tomorrow in Mission Products Holdings the Supreme Court of the United States stated as follows:

"Section 365 enables the debtor or its trustee upon entering bankruptcy to decide whether the contract is a good deal for the estate going forward. If so, the debtor will want to assume the contract fulfilling its obligations while benefiting from the counterparties' performance. But if not, the debtor will want to reject the contract repudiating any further performance of its duties. The Bankruptcy Court will generally approve that choice under the deferential business judgment rule."

While we are aware that the fees at issue are not insubstantial, the debtors believe that authorizing us to honor our agreement to pay them, only for so long as we believe that it makes sense to do so, and with all of the bells and whistles and review rights and objection rights and judicial oversight in the proposed order is the right

deal at present and is in the best interest of the estates, and we ask that the motion be approved.

THE COURT: Okay.

MR. ECKSTEIN: Your Honor, good afternoon I guess.

THE COURT: Good afternoon.

MR. ECKSTEIN: Kenneth Eckstein of Kramer Levin on behalf of the ad hoc committee of governmental and other contingent litigation claimants.

Your Honor, I'm happy to proceed and supplement Mr. Huebner's extensive and I think comprehensive presentation on the motion, but I wanted to ask Your Honor whether you would prefer to hear the objectors first and then have me --

THE COURT: Well --

MR. ECKSTEIN: -- respond to --

THE COURT: -- it was --

MR. ECKSTEIN: -- some questions.

THE COURT: -- extensive and comprehensive. I'm not sure what, you know, I have -- I have your pleadings. You laid out in that pleading the different roles that the professionals play. So I'm not sure there's anything really to add other than to respond to points that might be raised in opposition.

MR. ECKSTEIN: That was my sense as well. The only thing I will say, Your Honor, in addition to the

pleading that we submitted last week -- and, Your Honor, there is also submissions by, statements by each of the 23 states --

THE COURT: Right.

MR. ECKSTEIN: -- that are -- plus the five territories that are supportive of the motion and are supportive of the settlement framework and that specifically acknowledge in those statements. And Your Honor may have also noticed that there was a pleading submitted by the ad hoc committee of dissenting states represented by Mr. Troop also supportive of the motion.

And I thought it was noteworthy that while the impeachment proceedings are proceeding today and while the election is proceeding we actually found an issue around which all 50, or at least 48 states can agree.

Your Honor --

THE COURT: I saw all those pleadings.

MR. ECKSTEIN: -- I'm happy to rise later and respond to specific questions or comments that are made after the objections.

THE COURT: Okay.

UNIDENTIFIED SPEAKER: Your Honor, (indiscernible) as well.

THE COURT: Okay.

UNIDENTIFIED SPEAKER: Thank you.

MR. HURLEY: Good afternoon, Your Honor. Mitch Hurley with Akin Gump on behalf of the official committee.

Your Honor, I want to make clear from the outset what the committee's objection is about and what it's not about. The committee's objection is not to the participation in these cases of the ad hoc committee of so-called consenting states. The committee encourages that participation and hopes that the sorts of contributions that the debtors have said they believe the ad hoc committee will make will be made. And we hope to work alongside them in that regard.

Your Honor, this also is not an objection where the official committee is taking the position that there will never come a time in these cases where a non-fiduciary's fees warrant payment out of estate property. It may be the ad hoc committee's fees. It may be one of the other seven, eight or nine ad hoc groups that also is formed.

The committee's objection is based on our view that under the law and the precedents it is clear that the moment has not yet arrived where a non-fiduciary's fees could be justified to be paid out of estate property.

Now we believe that that's true across the board where we are in this case. We haven't got an RSA yet. Obviously there is no, as Mr. Huebner discussed, new money

or secured financing that often accompanies a non-503(b) payment of fees. I think what you do see across the board in all of those cases though is a relatively broad creditor or party in interest consensus behind a pathway that appears like a promising way to a prompt exit.

In this case we don't have that at all. We have many creditor groups that have looked at the settlement framework and have said, it's interesting. We want to examine it. It may be something that makes sense in these cases.

Your Honor, that's what the ad hoc committee is saying. They're not yet signed on to that deal. They want to diligence it like everybody else. So we're not at that stage, we submit, for any kind of arrangement. But this particular arrangement that's being proposed, Your Honor, the official committee submits is especially extraordinary.

The proposal is that for this one non-fiduciary group estate property will be used to pay four separate law firms for a single client, FTI plus two other financial experts. And I'll get in a minute to the change that they made to how Compass and Culture are going to be paid. But to us it appears to be a distinction without a difference. So you're really talking about seven professionals. And it looks like they're going to try and hire an investment banker to make it eight at some point in the future,

although they're going to come back with a different motion for that.

So they are before Your Honor not just asking to pay a non-fiduciary's fees in very unusual circumstances, but to ask Your Honor to approve paying seven professionals for a single client in very unusual circumstances.

Now Mr. Huebner said something suggested that it would somehow be a breach of trust if these fees are not paid. He made his promise. Of course, Your Honor, Mr. Huebner knows as the Court does that the only thing Mr. Huebner could promise was to make this motion.

And moreover, Your Honor, the ad hoc committee that he was negotiating with when they came up with this seven or eight professional arrangement is represented by highly experienced and sophisticated counsel. They are in the room today.

It cannot have been a surprise to them that there could be headwinds for a motion of this kind at this stage in the cases, particularly when you are insisting on seven or eight professionals representing a single non-fiduciary.

The committee was prepared to be reasonable in this, but no compromise could be reached before today. That leaves the debtors in the unenviable position not only of having to carry their burden of proving this is in the best interest of the estates to pay a non-fiduciary at this stage

in the cases, but to pay the fees of seven professionals for a non-fiduciary at this stage in the cases. The official committee submits they can't do it and they haven't done it.

I want to talk about the standard for a moment. So Mr. Huebner referenced the Orion case which is a case that Your Honor has yourself cited in describing how the business judgment standard is applied within this Circuit.

According to Orion, "Bankruptcy Courts sit as an overseer of the wisdom with which the estate's property is being managed."

The Second Circuit in the Nastas (ph) case citing Orion provided, "Assumption of a contract requires a judicial finding up front that it was in the best interest of the estate and the unsecured creditors for the debtor to assume the contract."

This is not a deferential standard. It is a standard that requires the Bankruptcy Court to step in, examine the evidence and reach an independent conclusion about whether the proposed decision is in the best interests of the estate.

Now, when examining whether a proposed decision is in the best interests of the estate, of course it is necessary to consider, not just potential benefits, but also potential burdens of the decision.

On the burden front, the Debtors' motion fails

completely with any evidence. The Debtors did not come forward with any projections; that's how much they think this is going to cost.

The ad hoc committee, in its papers, also didn't submit evidence, a declaration or anything. But, in their brief, they say that probably it'll be a million and half to two million dollars just for the four law firms, per month; another million per month for FTI and they don't say anything about how much Colter and Compass are going to cost going forward. Let's just assume, for sake of argument, that it's $3 million a month.

So if this goes on for say six months, we're talking about probably close to $20 million in fees over that period of time.

And the question is what can we be sure, at this stage of the cases, are the estates going to get in return for that $20 million. And the answer is nothing. Okay?

They refer to the fee letter to say that there are some obligations on the part of the ad hoc committee here but there really aren't.

What the fee letter says is that the ad hoc's professionals only will get reimbursed if they do certain things. They don't have to do those things. But, if they want to get paid, they have to do work within the scope.

That scope includes doing the diligence that A lot

of other parties in here also want to do to try to evaluate whether the settlement framework makes sense in these cases; whether it's something that the parties really want to advance to a final deal. That's part of it.

But this is really important. Part of it, and the Debtors have been really up front about this, and the ad hoc committee has been really up front about this, they except the estates for pay for them, to negotiate allocation, their groups against all the other groups, okay?

So that means, as a practical matter, Your Honor, we could be in a position; I hope we won't, and I'm not saying we will, but it's a risk, that this group of ad hoc folks with their seven professionals are billing the estates for six months or eight months, diligencing the case, try to negotiate a deal that's acceptable to them and they can't. And everybody else, but the ad hoc group, says we think we have a path to exit. Here's the plan we want to proceed with. The ad hocs, at that juncture, after getting 20, 30 40 million dollars of estate money can say, I don't like it. And now not only am I not going to aid an early, an early reorganization, I'm going to spend the next six months fighting it.

Like I said, I hope that doesn't happen but it could happen. And how do you avoid, how do you be sure, that that doesn't happen in a case like this?

The code and the bankruptcy case law provides an answer. So one way is through 503(b). You don't actually pay the non-fiduciary's fees until they have actually been able to come to the Court and demonstrate I actually did what I said I was going to do.

The Court knows, at that point, and they can make a judgment about whether that warrants payment.

Another possibility was with respect to an RSA, new financing, new money; where there is some kind of concrete commitment; with some kind of concrete steps that are going to be taken, that people can get behind.

And, again, we're in a situation where there is not one single party that has stood and said that it currently believes the settlement framework is in the best interests of the estates. Not the Debtors, not the ad hoc committee. That doesn't mean it's not but we're not there yet.

So that's part of the, I guess, the potential downside that's you wind up spending a lot of money and getting nothing from it.

But I want to talk a little bit about in the best interests balancing, the benefits that the Debtors say go along with granting this motion.

So they put them really in two buckets. There's the buck of benefits that they say have already been

conveyed by the ad hoc committee and that bucket includes advancing the settlement negotiations towards the framework, supporting the injunction, obtaining disclosures from the Sacklers, among others, and with respect to those items, they say that, for instance, they believe that the ad hoc committee support for the injunction was very important to it being granted.

There's only person in this room that can answer that question. But we'll assume, for the sake or argument, their a hundred percent right about that.

And although it seems like there may be a little bit of revisionist history about who was involved in getting us as far down the field as we are, I think it was more than just the ad hoc committee, but I'm sure they had a valuable influence on that process and they also were helpful in obtaining disclosures from the Sacklers and we appreciate all of that work.

But assuming that everything they say about those kind of cost benefits is a hundred percent accurate, Your Honor, there's still past benefits. They are things that have already been done and so that's what a substantial contribution motion is for.

And, in fact, Your Honor, the U.S,. Trustee said, in their papers, look, it's too early to know whether or not the ad hocs are going to make a substantial contribution.

And Debtors responded specifically by saying you're wrong. We know already. They did these three things.

Well, if that's the case, Your Honor, that's what 503(b) is for, substantial contribution would be appropriate for those kind of past benefits. They don't justify go forward fees.

Now with respect to the benefits that the Debtors say will accrue to them if the motion is granted going forward, and I want to talk about them in two ways.

First, and I'm going to get to this in a minute, these benefits, of course, are material to the extent that the actual relief sought by the motion is necessary to get them, right?

And the Debtors say something like this in their papers that they bring this motion, something like "to allow the ad hoc committee to participate and continue its role in these cases". Okay.

And in a minute I'm going to talk about why I think they haven't carried their burden to show that the relief they seek is actually necessary to get any of these benefits.

But I want to go through them quickly. These are the kind of go forward items that we've heard Mr. Huebner discuss.

So first is continuing to gather discovery from

the Sacklers. We encourage them to do that. We hope they will alongside the official committee alongside the non-consenting estates committee and a lot of other parties, who all also are going to be doing that.

The official committee has a stipulation. The non-consenting group is working on a stipulation that would get them access to the same information.

We welcome the ad hoc committee doing the same thing as well.

But there are others that are working on the same thing.

Using their police powers to "leverage" a better deal from the Sacklers. Of course, the ad hoc committee members aren't the only members, constituents in this case that have police powers. The constituent members of the non-consenting group to some of the members represented on our -- as I've -- on our committee do as well now and, to some degree, it's really the non-consenting estates that in a way would have more credibility about trying to increase the value of the settlement because, unlike the ad hoc committee, they've said, we're not agreeing to this unless it gets better.

So, there will be help there even if for whatever reason the ad hoc committee decided they weren't going to continue based on this motion which is, I'll get to in a second, I think is implausible.

They say that is saves an administrative burden to have the ad hoc committee involved and they say without the ad hoc committee, they would have to communicate separately with thousands of municipalities and tribes.

But, Your Honor, at the same time, they say it's the PEC speaks for those thousands of administrative -- of municipalities and tribes., right? I mean, that's why the ad hoc committee is helpful is because the PEC is on it and they contend, I don't know whether it's true or not, but they contend that the PEC is the voice for those thousands of municipalities. Obviously the PEC isn't going to disband depending on what happens with this motion.

In addition, they say they would have to work with dozens of different States, 24 of them are organized in a different group, 10 States of privately engaged with Kramer Levin. So, there are -- the States are organized in other ways in addition to the ad hoc group.

And then finally they want the ad hoc group to be involved, to be able to turn the settlement framework into a confirmable plan.

Again, we're just, you know, in the official committee's view, not close to being -- having a consensus of creditors that are ready to say it's time to move this to a confirmable plan. I think everybody wants to do what the ad hoc committee is saying it's going to do, to learn more

about the settlement framework and decide whether it makes sense to advance it to a confirmable plan.

And there is a concern among some quarters that by agreeing to pay fees for a party that at least has suggested it might support the framework that kind of puts the thumb on the scale in that direction, it may be the right outcome eventually but I think that determination is still a long ways off.

Now I want to turn to the question -- and, again, we hope the ad hoc committee participates and we think they can bring things to the table but from the official committee's perspective it hasn't been shown -- not just hasn't been proven, but it hasn't even been indicated that it's plausible that this -- the relief that's on today, an order requiring the estates to pay the ad hoc committee's fees on a current basis, like maybe they could come back later, but on a current basis that that somehow was going to result in the ad hoc committee diminishing its participation in these cases.

There's some reasons given for why that might be true. I don't think they really withstand much scrutiny. There's been a suggestion that states and municipalities can't pay private attorney's fees and there'll be a lot of evidence that that's not true.

You have the non-consenting group that has a law

firm working for it. They're not here asking for their fees.

If you look at the exhibit for the by-laws of the consenting group you can see that virtually all of the municipalities have engaged private counsel one way or the other. So that doesn't seem likely.

But I think more fundamentally you have -- when you're thinking about the question of is the outcome of this motion going to be dispositive about the participation of the ad hoc committee, you have to look at what the ad hoc committee and its constituents are themselves saying, okay?

The ad hoc committee filed papers on Friday and one of the things that they said in their papers, it's a theme that they've repeated and I've heard it repeated again here by counsel for the Debtors, is this idea that they believe because government entities don't sit on the official committee that the official committee cannot represent governmental units interests.

We've, the official committee, has assured and reassured that we believe that is untrue. We recognize our fiduciary duties to all creditors. Black letter law that even -- that non-members enjoy that fiduciary obligation just as much as creditor classes that are represented on the committee.

We certainly have not, as suggested in one of the

submissions, reached a conclusion about allocation. We've cited a study about the sort of 70 percent private versus 30 percent public breakdown, really to push back on the contention that was made in the papers suggesting that the ad hoc represents the majority of creditors. It hasn't been determined yet and the official committee has, in no way, shape or form, taken a position. But clearly it's not certain on either side. That's the reason we've cited that.

We also have gone out of our way to add as (indiscernible) members the representative of municipalities and the tribes to get their perspective. So we are 100 percent confident that the official committee can represent those interests.

But, for purposes of this motion, you have to take at face value what the ad hoc committee is saying its constituents believe and they say flatly that its constituents believe the ad hoc committee is "essential" because they believe the official committee can't represent their interests.

Those interests, Your Honor, the constituents of the ad hoc committee valued it multiple billions of dollars. So the notion that if they really believe the ad hoc committee is essential to representing those multi-billion dollar valued interests that they would walk away from or disband the ad hoc committee, the essential ad hoc

committee, over a dispute about whether their fees are going to be paid now or potentially later, is, in our view, highly implausible.

And if the ad hoc committee is going to participate in these cases anyway, how can it be in the best interests of the estate to pay for what they're going to get anyway when you've got the ad hoc committee saying, we have to be here because the official committee can't represent us.

They've been involved for months without having their fees paid by the estates. I don't think there is a scrap of evidence on the record that suggests that that's going to change depending on the outcome of this motion. And, again, we're not saying they'll never have an opportunity to get paid by the estates. There may come a time that they have actually done and supplied the benefits they say they're going to. We can all come back here and maybe, at that time, they satisfy 503(b) or otherwise. So this isn't necessarily the end.

So I want to come back briefly to the specific terms of the engagement that has been proposed. Again, you know, we've obviously argued that we don't think really any arrangement is appropriate yet.

But the arrangement that they're suggesting now is particularly difficult for us to understand. There are four

law firms as I mentioned before, each of those four law firms simultaneously represents a creditor of Purdue, either in this bankruptcy or otherwise in respect to the opioid crisis. That obviously is going to create some concerns about conflicts going forward. It's clear that the ad hoc committee itself has thought about that. Their by-laws include a provision that frankly is unlike anything I've ever seen that says that in the event that a member can instruct one of those four law firms to take an action that's contrary to the interests of the ad hoc committee and, if that happens, their -- the other members can seek to disqualify.

You know, obviously, it also says that they're going to adhere to all of their professional obligations and I'm sure they will but it's a very difficult situation for a lawyer to be put in where that kind of conflict is anticipated and it doesn't result in the usual agreement which is the lawyer that represents two clients has to withdraw from one of them. It's the opposite. It says, you know, you can continue to act adverse to one another. You just have to do it within the bounds of your professional obligations.

I'm not quite sure what means or how that would happen but it -- a difficult position at least.

Also a real risk that --

THE COURT: They don't get for that though, right?

MR. HURLEY: What's that?

THE COURT: They Don't get paid for representing individual clients.

MR. HURLEY: That is -- that's the idea.

THE COURT: I think it's actually in writing in the order.

MR. HURLEY: Right.

THE COURT: So it's not an idea.

MR. HURLEY: Correct. That would be the requirements.

THE COURT: Okay.

MR. HURLEY: I think that in practice it would difficult for them to be able to divide this up and they actually say something about this that I think is pretty relevant. By they, I mean the ad hoc committee.

At page -- paragraph 63 of the ad hoc committee's submission on Friday, they say that if the motion isn't granted there can be guarantee that the ad hoc committee itself will continue to play the vital role it has played to date or even exist in its current form if it is forced to confront difficult issues of fee allocation among multiple groups of creditors, the state, tribes and municipalities, whose interests are frequently at odds.

So the ad hoc committee itself appears to be

acknowledging that it's going to be difficult some times to know whether one of those four firms is doing something for the ad hoc committee or for one of its members.

THE COURT: Is that how you read that statement?

MR. HURLEY: That is how I read that statement.

THE COURT: Really? I view it -- and this goes back to something you said earlier which is that this motion is largely, if not entirely, about setting the structure for how the states deal with this case.

And the question for me is the cost of that structure worth it or not.

And I think if you don't have that structure where they actually do have a coordinated set of professionals you run the risk, as they say in their pleading, of -- as happened at the last hearing, someone just popping up and saying, well, I'm from "X" county and "X" state and we disagree with all of this.

And I think the more you have the structure, the less that happens.

MR. HURLEY: Your Honor, and I -- the official committee recognizes that dynamic and we have sought to be reasonable. We have not been able to obtain a compromise which is why I'm coming back to the specific engagement they're asking Your Honor to adopt which includes the seven professional firms.

THE COURT: Well, I'm not asking you to suggest any or relate any settlement discussions. But if you're just proposing an all or nothing approach, either grant the motion or deny it, then you run a big risk that I'll grant it.

So maybe you suggest how this could be improved.

MR. HURLEY: Sure. So we've had multiple kinds of discussions --

THE COURT: No. No. You don't need to get into the discussions --

MR. HURLEY: Oh.

THE COURT: -- just how does the committee think this could be improved? Without waiving any of your rights to object --

MR. HURLEY: Understood.

THE COURT: -- to the whole thing, of course.

MR. HURLEY: Understood.

THE COURT: All right.

MR. HURLEY: Okay.

So the official committee, as Your Honor knows, has been very very focused on the emergency relief fund from the beginning of these cases. And we have -- and I -- Mr. Preis may interrupt me to get some color on this because he is more closely involved in the negotiations than I was, but one of our thoughts was that the emergency relief fund,

if we could get adequate support from the ad hoc committee for moving that forward promptly that that might be a way to resolve the objection so that we have money going out the door to the people that really need it in the opioid crisis before we're talking about more and more money for lawyers. That was an idea.

THE COURT: Okay.

MR. HURLEY: Arik, do you want to -- do you have anything to add?

MR. PREIS: Can I address -- I know it's a little bit irregular.

THE COURT: Well, and I get that point. If there's some other point, I --

MR. PREIS: No. Well, Your Honor, we also -- obviously we had talked about, again without getting into settlement negotiations.

THE COURT: Right.

MR. PREIS: But as a committee there are other things that were important to us; things like should there -- would we be okay with as the U.S. Trustee says substantial contribution motions being filed.

Obviously that would have been fine with us as well, you know, on a quarterly basis.

THE COURT: Okay.

MR. PREIS: The issue of -- just to go a little

bit further on what Mr. Hurley said, which is that instead of tying the emergency relief fund to this motion, what we had suggested was perhaps allowing a work fee for a certain period of time, call it 30, 50, 60 days but then having the emergency relief fund and this motion rise and fall together at the same time, at some time in January the idea being we understand that they need to do work for a while but, at some point, at some critical juncture, that has to stop.

We also thought and talked about size, scope, number of firms, number of -- you know, capping amounts. None of those things -- you know, we addressed them all both as a committee and during settlement negotiations. None of which really got any traction. So --

THE COURT: Although I can that -- those points to my mind are largely dealt with by the agreement for review like all estate professionals are being reviewed.

MR. PREIS: So if I could just address --

THE COURT: I mean, I -- I'm not that proud of it but I think I have the largest fee denial in history.

MR. PREIS: I object, Your Honor.

(Laughter)

THE COURT: And believe it or not it was Harvey Miller's fee as an investment banker. So --

MR. HURLEY: I argued that motion.

MR. PREIS: It was one of my objections, Your

Honor.

MR. HURLEY: I argued that motion in front of you, Your Honor.

THE COURT: I know. I remember.

MR. HURLEY: Anyway. Okay.

THE COURT: It wasn't because of bad work you did. It was just, as you know --

MR. HURLEY: I remember.

THE COURT: -- it was on different grounds. But --

MR. HURLEY: I remember. So -- okay. So if I could just go through some of the changes that were made and one of them is what you just referred to which is that now there's going to be the opportunity for the committee to review their --

THE COURT: Well, everybody.

MR. HURLEY: For everyone to review their bills.

THE COURT: Right.

MR. HURLEY: I mean, from the official committee's perspective, of course, Your Honor I'm sure would gather not satisfactory to us on this motion because our view on this motion is that paying on a current basis in the first place isn't appropriate and really what this would call for is that as long as they can prove that they're acting within the scope, which is somewhat vaguely defined, that the fees

are going to get paid subject to some other qualifications. So it's not satisfactory to the official committee but that's really fundamental to the objection we're making today.

I do think that some of the other changes like that they're saying that if they can't get paid for duplicative work that's sort of to use your term ice in winter, they can't get paid for duplicative work anyway. I presume that would be sort of per se unreasonable if we could identify things that were actually duplicative.

The notion of sharing FTI with the other states, we think is a great idea. But it's limited in that they only -- it's subject to areas where they have common interests with the non-consenting group. Presumably, there will be a fairly wide range of areas where they don't have a common interest group. But, moreover, the official committee has made the same offer to all the creditors including the states that, to the extent it's consistent with the privilege, they will have access to province to to Jeffries (ph).

The pre-petition cap of fees at 1.5 million was surprising I guess to me partly because they in their 1219 statement, the ad hoc committee acknowledges that it was initially formed on the petition date. So it's hard for me to understand how fees incurred before the client existed

could be subject to reimbursement and to the extent they are that again seems like the 503(b) paradigm. It's like, well, if it's already been done by definition rather than through a motion of this kind.

THE COURT: Well, of the RSA paradigm.

MR. HURLEY: Or the RSA paradigm essentially.

THE COURT: And it doesn't kick in until you have an RSA or a --

MR. HURLEY: Oh. The -- I guess it goes with a --

THE COURT: Well, you said you were going to address the financial types beyond FTI.

MR. HURLEY: Yes. So the way the order reads is, you know, it was a little confusing to me but it seemed like what they're providing is, like I said, a distinction without a difference for Compass and Colter. The motion does currently seek approval of retention of Compass and Colter on a current basis.

They then say in the same paragraph that describes the application process for the law firms and FTI, later in the paragraph they say no fees will be paid to Compass or Colter except in connection with an order in connection with an application referred to above which seemed to me like they were just saying you have to make an application for payment of Compass and Colter as you do with respect to the other five.

I mean, I don't know if that's what they meant but it was certainly how it read.

THE COURT: I mean, I didn't --

MR. HURLEY: And maybe we'll get clarification on that.

THE COURT: I didn't think -- I thought it was -- because that would have circular. I thought it meant that they don't get paid except on a separate retention.

MR. HURLEY: Like a separate 363, 365 motion?

THE COURT: Well, maybe you can just clarify.

MR. HUEBNER: Yeah. Sure.

Your Honor, it's actually in the middle of those two things. So let me just (indiscernible).

So, you know, we said four law firms, three FAs, can we do something here. And they said well, two of them aren't even working right now. And I said well, then, why are we -- why does the initial draft of the paper say I don't need these three FAs. And so what we ended up with is it's a hybrid which is we don't need to come back and make a new motion because that's a lot of expensive paperwork that makes no sense.

It's not circular and it's not a typo. It's quite in fact I think reticulated because they can't submit the monthly bills if they start and get paid under the regular monthly process. They can't get paid a penny unless at the

next succeeding quarterly application, when everyone else's fees are up, there's an explanation of Your Honor they started work 41 days ago. Here's why we need them. Will you allow them to be paid?

And if the Court says you know what, this start up was not appropriate, then I'm denying it all. They're not getting paid anything and they lose the weeks that they worked because they're not getting anything in the interim.

If you're -- I was just trying to save paperwork. To make a separate motion for these two small firms when if they start up they're not getting one red cent until -- one penny until Your Honor has it front of you. That was the compromise we thought was quite sensible.

THE COURT: Well -- so maybe the distinction then is one that isn't necessarily in the code which is that -- well it is in the code but maybe not honored in practice which is that as part of the reasonableness of them getting paid is the reasonableness of them starting up work in the first place.

MR. HUEBNER: No. And that's exactly -- that's exactly why we did this which is we said to them you're going to have to explain at the application if turns out there was specialized work that I could not do alone, so we restarted them and if Your Honor is not convinced and people object, they will not get paid. That was the exact

approach.

But to file a whole new motion to say that when a month or two later -- so we said no; just make them work without current pay until the next application so we don't have to another hearing and another motion and more wasted money on nothing. I actually did (indiscernible) respectfully is actually quite thoughtful and does the job that Mr. Hurley --

THE COURT: Okay. All right.

MR. HUEBNER: -- and I and you are talking about.

THE COURT: Okay.

MR. HURLEY: Can I ask a clarifying question?

THE COURT: Sure.

MR. HURLEY: Would there be any limit to the nature of the kinds of objections that could be made to either the fact that they (indiscernible) or the amount that you're proposing to pay them?

MR. HUEBNER: No. We -- no. To be clear. Nothing in this order limits any party. As Your Honor often says you can make a motion. But you see lots of heads nodding that Mr. Hurley is right. If the objection is they never should have started, this is wholly duplicative, and I'm assuming the ad hocs will probably call a few people and say, hey, just so you know, it turns out there's an (indiscernible) tax question that we need this firm for that

FTI can't answer, so we're going to start them.

And then we will say or the committee will certainly say we reserve our rights. We'll see you at the application. And if we don't think it's justified, we're going to be objecting on all grounds including that you didn't them at all and that it was the least -- it was not the most cost effective way.

But I am speaking for a bunch of people here. So I'm looking for people to say like yes, Mr. Huebner, that's sounds quite correct.

(Laughter)

MR. HUEBNER: It sounds generally correct.

(Laughter)

THE COURT: All right.

MR. HURLEY: So just I guess wrapping up the number of professionals has been a bit of a concern to the committee. And coming back to the question that Your Honor asked about ways that we have considered that might make it more reasonable. We named a few of them.

Another that we certainly considered to be more reasonable if there was a, for instance, a single independent law firm representing the ad hoc group and one or two advisors shared equally among all the states. I doubt we'd still be standing here if there was anything closer to that. But that's not what we have despite

everyone's I'm sure best efforts. We have the motion that we have and we certainly object to that.

But just finally I guess I've been a bit of a broken record on this the objection is not to the participation of the ad hoc group. We have -- we are looking forward to working along side them; just to their payment of their fees and just the payment of their fees now.

Arik, do you need to address something?

MR. PREIS: Yeah.

THE COURT: You can stay there. You don't need to -- that mic will --

MR. HURLEY: Unless Your Honor has some questions, I'll --

MR. PREIS: Your Honor, this is not by way of argument but there are a number -- I don't want to really do this but Mr. Huebner testified a number of times from the podium earlier. He said a number of things that were affectively directed at me and at us about things that we did or that we took part in that I happened to know what happened.

So I don't want to get into a he said, she said with him but -- and I prefer just to leave it at that or I can explain to you kind of some of the things he said that were just factually incorrect to us.

So again I don't want to have to do this but I -- if you don't want to -- it's -- it doesn't change the argument we made but there were some things he said that were just --

MR. HUEBNER: Well, let me help for a second. I certainly never planned to speak. I don't think I wrote any of those down.

(Laughter)

MR. HUEBNER: Let me just --

MR. PREIS: Thank you.

MR. HUEBNER: Let me say one thing. To the extent that I inaccurately or incorrectly described a conversation with the FTCC stipulation, I apologize if I misspoke that way Mr. Arik believes. I don't think they're germane and relevant and I didn't write them down anyway. But I'll figure out later where I might have misspoken.

MR. PREIS: Okay. Thank you.

THE COURT: All right.

(Pause)

MR. SCHWARTZBERG: Good afternoon, Your Honor.

Paul Schwartzberg for the U.S. Trustee's Office.

As Your Honor is aware, the Debtors moved under 363 and 365 to pay the professional fees of the ad hoc committee.

The U.S. Trustee, however, believes that the code

has a more specific standard to pay the fees of an ad hoc committee and that would be under 503(b)(3)(d) and (4) which require the ad hoc committee to show a substantial contribution before their fees can be paid.

And this insures that the Debtor received a benefit from the ad hoc committee before its fees are actually paid. And this is higher standard than the Debtors just -- are suggesting and we believe if you contrast -- and the reason for that higher standard becomes obvious we believe when you contrast it to what you see with the official committee.

With the official committee you're having a neutral third party, the U.S. Trustee, appoint that committee under 1102. The professionals of that official committee are then vetted. They have to file applications under 327 and make disclosures under Rule 2014 and this governs to make sure there are no disqualifying conflicts that those professionals have. And then their fees, of course, are subject to 330 and 331, and those standards.

And the that committee has an obligation to the estate and all creditors, a fiduciary obligation. But you don't have that with an ad hoc committee. In fact, the proposed order specifically disavows 327 and that rigorous standard for the committee professionals.

So we believe that's the reason why the code set

forth 503(b) and a higher standard for the payment of the fees of an ad hoc committee and we believe that there's a specific standard set forth in the code and that that specific standard is the standard that the Court is -- should follow and not the more vague and less direct standard that's set forth under 363 and 365.

THE COURT: Okay.

MR. SCHWARTZBERG: And for that reason we object to the motion.

THE COURT: Okay.

MR. NEIGER: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. NEIGER: Edward Neiger of ASK LLP on behalf of the ad hoc committee of individual victims in this case.

We are very grateful to be here. And before I get into the substance of the objection which I assure Your Honor after reading the briefs will be short.

Since this is my first time appearing or the committee's first time appearing in this case, we were hoping for a brief indulgence to tell Your Honor a little about the committee and its members and, more importantly how it can make a positive contribution to these cases.

The ad hoc committee is made up of a committee of individuals that is made up of just eight members. Seven of the eight are victims of Perdue. The eighth represents

victims of Perdue who at least for now wish to remain anonymous.

Each member is active in helping people suffering from addiction and their families and works tirelessly to prevent others from suffering they way they did.

Our members include a former governor and attorney general as well as leaders of national prevention awareness and recovery organizations including the CEO of Center on Addiction which is the successor organization to the partnership for a drug free America, which I'm sure Your Honor is familiar with. And they reach tens of millions of people a year.

Other organizations that are members have leadership roles and include team sharing, which is a national non-profit organization dedicated to parents who have lost children to substance abuse disorder; the foundation for recovery, an organization dedicated to removing social barriers and creating opportunities for those seeking long term recovery; soldiers, a grassroots organization helping individuals and families overcome addiction, depression and homeliness and the voices project, a non-profit organization, a national one, dedicated to the eliminating the stigma associated with addiction.

Several of our committee members have suffered the unthinkable; the loss of a child to overdose. One of these

members is here today and was sitting right next to me in the last row. Her name is DeeDee Yoder (ph) and if I could just tell her story very briefly, not to be dramatic, but to be able to give Your Honor an idea of where the committee is coming from when it takes positions in this case; whether on the matter before Your Honor today, or in the future.

Ms. Yoder was a single mom of an incredible son named Chris. Christ was her only child and was her entire world. Chris was a happy, smart and social kid who loved the outdoors, love roller blading and skate boarding.

When he was 14, he broke his knee and had surgery. It was just an accident. It could have happened to any teenager.

His doctors have him OxyContin for the pain and, like so many others, he became addicted. Chris spent his high school years battling the addiction that started with that very first dose.

Ms. Yoder did everything she could to save her son's life. That took a huge emotional and financial toll on her but she never stopped fighting for Christ; no matter what.

On April 19, 2017, DeeDee received the call that so many parents of children fighting addiction dread. She was in the middle of a business meeting in Paris when it came. The voice at the other end of the line told her

matter of factly, ma'am, there's no easy way to say this but your son is deceased.

Chris was 21 years old. He dies of an overdose of heroin laced with fentanyl.

DeeDee is now an ambassador for Shatter Proof, a national non-profit organization dedicated to reversing the addiction crisis in America.

There's one more person, one more mother, in the courtroom today and I don't have a long speech about here not because she's not as important or I don't like her as much but because I didn't know she would be here when I drafted this text.

But I would be remiss if I didn't acknowledge her. She came all the way from Boston, drove four hours to be here today, Ms. Kay Scarpone, she's sitting in the second row from the back, the third person from the right and I would just like to acknowledge her son in the record, on the record. Kay lost her son, Joseph Scarpone, who was a U.S. Marine. He served our country from 2007 to 2011 including a tour in Afghanistan.

When he got back from it, he was a Marine Sergeant. When he got back from Afghanistan, he was injured and went to the VA where they gave him opioids.

Sadly, Joseph Scarpone died when he was 25 of overdose and I know that Kay misses him dearly every day.

So that's who we are, Your Honor. We hope to advocate for the individual victims in this case who have suffered terribly.

But more importantly to make sure that no more mothers go through what DeeDee and Kay went through ever again.

Turning to the substance of our objection to the Debtors' motion. I think at best at this point my time and everyone's time would be most useful if instead of going through the objections I provide Your Honor and the other parties here with ideas on how I think the order could be approved.

In the revised order, the Debtors have -- sorry, Your Honor. I was on line for an hour.

In the revised order, the Debtors have put in a provision that says that the ad hoc committee cannot use any funds being paid by the Debtor to object to other creditors in this case and I appreciate that. I think that's an improvement.

It shows that the Debtors acknowledge that notwithstanding all the good that the states have done so far, both consenting and non-consenting, which I acknowledge strongly. We would not be here today if not for all of the hard work that the states have done. They have essentially brought Perdue to its knees and before Your Honor in the

Bankruptcy Court which we think is a great thing, both for the Debtor and for all the creditors.

So we say thank you to the states.

But it doesn't make sense for the states to be able to use money from the estate to object to other creditors. I think the Debtors acknowledged that when they changed the order.

The problem is this. The way the states -- the way the issues of allocation will ultimately get decided may not come in the form of a formal objection. It may come in the form of an allocation that the Debtor and the ad hoc committee put forth in a RSA or in a plan or reorganization which may not come in a formal objection.

So what I would propose, Your Honor, is to make more clear that the money that the ad hoc committee receives from the estate could be used solely in connection with bringing money into the estate, getting money from the Sacklers or from the other sources of recovery, continuing to do what they have done so well until now.

And that it not be used in connection with anything, a formal objection or not formal objection, that can hurt the other constituents, particularly the non-state victims in the allocation proceeding.

So that would be my primary suggestion.

Mr. Preis mentioned the emergency relief fund. I

can tell Your Honor that that is extremely important to our committee who know very well the problem that this country is suffering from. A 130 people die every single day from overdose. That's one person, every 11 minutes. So, in the time that I stood up here, one or two people have died from overdoes.

That emergency relief fund is vital. I don't know where it stands or what's going on with it. I just want to say on the record that anything that Your Honor can do to push the parties forward on that would be very much appreciated by a lot of people in this country.

Those are the two things that I had, Your Honor. Other than that, I'm happy to answer any questions Your Honor has.

THE COURT: Okay. Thanks.

(Pause)

MR. MARKOWITZ: It's Scott Markowitz, Carter, Klinsky and Grogan.

Your Honor, we represent the ad hoc committee of NAS Babies. We appeared last time. We joined in the objection. Some of the comments I have will be similar to Mr. Neiger and it will be brief.

The NAS Babies are babies who were born neonatal abstinence syndrome because their birth mother ingested opioids during pregnancy. There's hundreds of thousands of

these babies around the United States in our group who represents, in general, that group of babies we think are claims in this case based upon both injuries and monitoring continuing care. It may be among the largest unsecured claims in this case.

I'm not going to supplement any of the legal arguments. We've been here long enough. We've heard them. It's fully briefed.

Similar to Mr. Neiger, I would like the Court to understand some of our constituents. In Court today is Kathleen Strain (ph). She is sitting right here. She has custody of her four year old granddaughter. She has recently told me a story that she -- at school, the school diagnosed her son who was diagnosed with neonatal abstinence syndrome when he was born. I'm sorry, granddaughter, was delayed in development which these -- all these children are generally delayed in development, was diagnosed that way at the school and got a referral to her local hospital in Berk's County, Pennsylvania, to the pediatric rehabilitation portion of the hospital.

She recently took her granddaughter there and they said you're 700 on the waiting list. We'll call you back in the year 2021.

So we, too, are very concerned about this emergency fund and it's very difficult for me, you have lay

people sitting here in Court and we talked a lot about bankruptcy stuff today; it's very difficult for me to explain to these -- my constituents why creditors like states and governmental authorities who have -- ironically have the financial ability to pay their own lawyers, which is normally the case for unsecured -- you know, Chapter 11 cases. Get their lawyers fees paid in this case when this money could be used, for example, so that this hospital might not have a 700 person waiting list.

So we would really like the Court to keep that in mind. We think that it sends the wrong message to really the primary victims of the opioid crisis. The opioid crisis victims are individuals or they're individuals represented by Mr. Neiger's group or they're our group of -- we think are the most innocent. These babies are born addicted to opioids. They have to put baby droppers in their eyes to get them off of this opioid addiction.

So under these circumstances, we oppose the motion.

THE COURT: Okay.

MR. MARKOWITZ: Thank you.

(Pause)

MR. CAGE: Good afternoon, Your Honor.

Nicholas F. Cage, (indiscernible) Stevens & Lee. We represent private purchasers of health insurance.

I'll be brief because I think we're all -- we've all heard enough today. But I just wanted to make a couple points.

We joined in the official creditors committee's objection and in our joinder we pointed out that there are three over arching goals in this case and two of those goals we believe are shared by all creditors. One is to maximize the size of the estate, including money that could be recovered from the Sacklers, from DNO Insurance or other sources.

One is to abate the opioid crisis. But the third goal is a goal where the creditors are going to be diametrically opposed, i.e., inter-creditor issues; how -- you know, who -- which group has a claim in what amount and how that stacks up against the other creditor group and an over arching concern there is the so-called state, SMT group, the states, municipalities and tribes versus the private litigants like us and the two parties you just heard from.

And the committee cited in its papers a report that said that private litigants may be 70 percent of the claims. And I was happy to hear Mr. Huebner say, earlier today, that even though he has said repeatedly that 85 percent of the litigations were brought by SMT claimants that doesn't necessarily mean that they are 85 percent of

the class.

The SMT claimants think otherwise. They say that they are the overwhelming majority of the claims against this estate and they say that right in their papers that were filed in support of the motion.

I share Mr. Neiger's concern that the funds that are going to be used from the estate not be used on any inter-creditor issues. It's not just object to claims. But one of the biggest fights in this case is going to be how the value that is recovered is ultimately allocated under a plan or otherwise among the various creditor groups. And they should not use our money to beat us up and get a better deal for their class. That's a parochial interest that they have. It's not something that benefits the estate in any way, shape or form.

So, in our view, no inter-creditor issues should be compensable from the estate. We'd rather see the money go to the innocent victims.

Thank you.

(Pause)

MR. ECKSTEIN: Your Honor, Kenneth Eckstein of Kramer, Levin again.

I don't have a lot but I think I need to add -- I did appreciate the comments that were made by Mr. Neiger and some of the other objectors and the recognition by

Mr. Neiger that the order was clarified to make clear that the scope does not include objecting to claims or litigating a defense of an objection to a claim against members of the ad hoc committee.

That said, we've always appreciated that one of the critical components of getting to a confirmable plan of reorganization is going to be one that is going to include a resolution of allocation and we do expressly contemplate that that is going to be part of our charge. I know Your Honor has admonished us to begin work on that immediately and we do contemplate doing that but we contemplate doing that in connection with the development of an RSA and a plan, which we think is the appropriate way to deal with it. We do not intend to deal with it in litigation and, in fact, the scope expressly excludes litigation from the scope of the ad hoc committee's role in the case, at least in terms of being compensated by the estate.

I don't know if Your Honor has any other questions.

THE COURT: Well, I -- you know, I think there's -- the issue of being compensated for work on allocation issues is a complicated one I think because you can conceive of a range of outcomes, many of which, most of which would be ones that would warrant compensation to your group.

And that's why I think it wouldn't make sense

simply to rule it out as was perhaps suggested separate and apart from litigation.

On the other hand, it's the type of issue that I normally would look at when someone put an RSA in front of me. And as the bankruptcy lawyers here know, RSAs are -- it's rare that someone isn't objecting to an RSA.

The Court evaluates it and decides whether it makes sense to approve it and in terms of dollars of cents the issue is the fees.

So I have been considering whether just as the pre-petition work is tied to the earlier of an RSA or a plan any work done on allocation issues should also be tied to an RSA or a plan. Not that you would apply the 503(b) standard to it but you just see how it shakes out at that point, you know?

If an RSA that proposes an allocation that everyone except -- I'm not suggesting this would be the case, but everyone except the private purchasers of health insurance, says, yes, we'll support this. This is a good path. Then I think it would be pretty clear that I would approve that.

On the other hand, if you all are the only people standing up in favor of the RSA and the 24 other states are saying no and the committees say no. This is not -- this is a waste of time, then I don't think that's really the type

that I would approve.

So it's clear to me that there's a real advantage to the estate and all the creditors to have the states focusing their energies through specific professionals, working with the other constituents in the case, towards a common goal, which is understanding the facts and dealing with the issues that are inevitably going to arise in a professional and organized way.

But I do understand the point about leverage and there is some undue leverage if you guys are being paid to push one allocation agenda in which everyone else is opposed to.

I'm not saying that's what you're going to do. So, in a way, I'm suggesting you -- maybe you all should live with that type of limitation just as living with a limitation on the pre-petition amounts.

MR. ECKSTEIN: Your Honor, I will point out that while we did hear Your Honor at the first day encourage us to broaden our role as much as possible and I think toward the end we entered into this understanding with the dissenting ad hoc committee estates as well as with the municipality ad hoc group that we would share the financial advisory work with them.

I think they were very supportive of that and frankly took a lot of comfort in that because I think the

goal is in order to build the broadest possible consensus, we think that the states and municipalities each and all need to be comfortable with not only the aggregate amount but how the plan is going to allocate.

And so I think this technique is actually very much supportive of getting to an agreed upon plan and I actually would hope that we can utilize that sharing as a way to sort of give the Court comfort that the allocation issue, which is an important issue, is going to be managed in a constructive and in an efficient way.

And I think that the Court will have the ability -- and all parties will have the ability I think to review the work that's being done. And to the extent anybody believes that the work is outside of the scope of getting this case to a consensual resolution, people will raise concerns I think at the time.

THE COURT: Well, this also ends if you don't have an RSA.

MR. ECKSTEIN: That's obviously true Your Honor. This can --

THE COURT: Right.

MR. ECKSTEIN: -- end and we're vulnerable to that and we sort of recognize that and are living with that risk.

But Your Honor does appreciate that there are timelines in this case that are important. One of the over

arching factors that motivated the consenting states and municipalities to support this settlement framework and ultimately a term sheet was we believe this is the most effective way to put billions of dollars from the company and the Sacklers into this country to deal with the problem and if we can get this done along the timeline that we've contemplated, we think that is really the over arching benefit that everybody is trying to work towards.

So we actually believe, quite firmly, this is a structure that is going to ultimately lead to the most effective and the swiftest resolution of this case, which ultimately is going to have to be embodied in a plan that's going to come before Your Honor for approval and we think allocation obviously is as important as the aggregate dollars that have come from the different quarters.

So we would hope that with the protections that we have given the Court and all the parties in the case sufficient comfort to believe that this can be reviewed on a regular basis; the monthly statements with the quarterly applications. We believe we've actually gone over and above in terms of what an ad hoc committee would do to try to make sure that there's going to be complete transparency about the role that's played.

THE COURT: Okay.

MR. ECKSTEIN: Thank you, Your Honor.

MR. HUEBNER: Your Honor, I'll be about four minutes in total and that's -- and then I think we're done.

There are eight very quick things that I think need to be said by Debtors and then we have nothing else.

Number one, for the avoidance of doubt, I think I was actually quite clear and I hope I was not misunderstood. What I said was that it would have been a breach of trust if the Debtors had said thanks for the support. We're now filing this motion. Nobody ever said if the Court did not grant the motion that that would be deemed to be perfidious in any way.

Two, there are concerns about costs and duplication. We share them. I mean, that's -- you know, as I said in I think point number three, every dollar that is spent during this case is a dollar that is not there at the end of the case. And the answers are the same.

We have built in a whole raft of search lights and protection and judicial oversight in the amended order and if people feel like the costs are not appropriate or the duplication efficiency is not appropriate, I have no doubt that the six other ad hoc committees or four other ad hoc committees and the official committee and maybe the Debtors will be objecting and this Court will decide.

So there's going to be a lot sunshine here.

Three, the Debtors are getting nothing in "return"

from Mr. Hurley. It's just not right and that's why I began with the judicial notice point, Your Honor, and this Court's ruling in Delphi. I think that the injunctions support something in return. I think that the term sheet is something in return.

I think that progressing the diligence and the deal is something in return.

And, in fact, Your Honor, if it's necessary, it's the rough Ascii, it's page 157 to 159, in the finished transcript. And we've been scrambling a little bit and I apologize for shuffling the papers. It's pages 164 to 166.

Mr. O'Connell actually testified under oath about what we're getting in return including the states and their advisors kind of glowering that the Sacklers never presented in and getting a commitment on the spot including someone getting on a plane to Asia to go unblocked diligence and get information flowing. Maybe we could have done that without them. Maybe we could have done it without them. I don't know.

Again I want to be careful not to deify them, you know, without the states, all that's lost because, you know, frankly, there are lots of people who deserve credit for things here. But there actually is sworn testimony on this point in additional to all of the items on the docket so far.

Fourth, allocation. It should not be minimized. This is not a simple issue and I think what you heard \Mr. Eckstein say is, you know, there's allocation and there's allocation. And as we're designing complicated mechanisms for the best way to figure this out including at the Court's constant urgings to be creative and thoughtful; that's one type of allocation.

If it's like I get more and you get less. That's a very different type of allocation and, frankly, I think many people will come roaring in if they start seeing on monthly bills and whatever Your Honor ends up ruling, I think no one in this courtroom could fail to understand that Your Honor views that as potentially being categorically different than growing the pie for all, which is where we are I think certainly at this particular phase of the case.

But we did narrow the scope after listening to the objectors to be clear about what we know it's not and what it's not is saying the estate should pay me to say you don't have claims but I do have claims.

Five, I agree with Mr. Hurley. The opposing states do have an important role to play and, you know, whether you want to call this we have six good cops and four bad cops or any sort of foolish metaphor, those aren't really helpful.

The reality is multiple entities have a role to

play but the opposing states are actually supporting this motion. So the very people that Mr. Hurley said maybe the opposing states can do this better and advance -- and make the deal yet better, they support today's relief, I think because of the view that this is like a ratchet, right?

We get more diligence. We get more information. Then some people firm up the deal we currently have and other people will undoubtedly be pushing for a better deal. And as we move -- you know, I said already at two hearings, they'll, you know, lock and build. Lock and build. So each one of these bricks puts down an edifice that ultimately is designed to get more value to the people in need.

Nobody disagrees with the need for diligence. I'm not going to repeat that.

With respect to 503, just to address the U.S. Trustee very briefly, we don't take issue with the legal principle, which I won't quote in Latin, that specific provisions trump general provisions.

But it's just a different thing. When a creditor often opposed by the debtor or others, says look backwards. I did great things. Please give me unique (indiscernible) being paid that's different than the debtor and others looking prospectively and saying, we actually think this is good use of money. So, ultimately we're down to the common benefit and we will (indiscernible) agreement. And again I

think our briefs are pretty clear on this and there's lots and lots of RSA case law that Your Honor has already alluded to. So we know that 503(b) is not statutorily specific.

Eight, and with this, I will close, Your Honor, you know hearing even just the tiniest fragment about the unthinkable pain and loss suffered by people in the courtroom today, you know, mothers and parents of victims and victims themselves, you know, as Perdue's "lawyer" it's not very easy for me to stand up and address that.

So, I'll say only a couple of things. One, Davis Polk arrived in March 2018 and since the day we arrived, our firm and the Debtors, as opposed to whatever people will ultimately figure out with respect to the past, are here to do the most good for the most people with Perdue's assets as expeditiously as that can be done.

And so ironically my first point of today is actually my last point of today. The opioid crisis is unthinkably horrific. It has scythed its way through our country like a pharmacological grim reaper.

And we have a shared goal to do the best we can for the most as quickly as possible; whether it's getting this case out more quickly, maximizing the value of the estate or the emergency fund that the Debtors -- the emergency relief fund that the Debtors firmly support and have to figure out the details on, that's what we're all

here to do.

This motion is not simple but for the reasons I explained at length in my initial presentation, we do think that especially with the modifications in the order, it is -- painful as it is to talk about professional fees and not saving the money for victims, ultimately we think that it will get us all to more for those who need it most.

Thank you.

THE COURT: Okay. Anything else?

MR. PREIS: Your Honor, did you want us to address your idea about not having fees paid until an RSA is signed with regard --

THE COURT: Well, I was focusing on fees -- an allocation as opposed to due diligence.

MR. PREIS: Yes.

THE COURT: You know, et cetera.

MR. PREIS: Did you want us to address that? I --

THE COURT: Well, if you have any thoughts on it.

MR. PREIS: Okay. So a couple of things. Again because I don't want to get into settlement conversations et cetera.

But one of the things that was absolutely discussed -- you asked me earlier what other -- what possibilities or what changes would we have made to the order.

One of the things we did discuss was this allocation issue and I told Mr. Huebner, we told Ms. Eckstein the same thing, which is putting something in the order that say you're not going to litigate about allocation doesn't solve anything.

I think they all know. In fact, I'm going to get to why that I think they kind of all know this. They all know that the real issue here for the states is the allocation issue which is why the first thing you said when you raised the issue, Mr. Eckstein said, no, no, no. That -- we can't do that. That's one of the most important things we're doing because that's actually from their perspective, almost as important as how much can we get for the estate.

The second thing is from the dissenting state perspective, it was kind of confusing to us why the dissenting states decided to support the consenting states having their fees paid when they're not getting paid.

And then it dawned on us, what's the common interest they have? And then we saw in the order, right, FTIs, FTIs' work product only gets shared to the extent there's a common interest. Well, what's their common interest? Allocation.

And so the one thing that they're so focused on is allocation. And so if you were to say to them, no. You

actually can't get those fees paid until an RSA is signed and then I'll make a decision at the time of the RSA, that actually puts pressure on them to come to a reasonable allocation as opposed to using -- as opposed to basically weaponizing the fees of the estate to be used against everybody else.

I think -- I just want to make sure that's --

THE COURT: That rederick's a little inflammatory. I -- you know, these are 48 states.

(Laughter)

THE COURT: They have responsibilities to their people and to the people that elect their government.

So I don't really view it as weaponizing. But I understand that when you're looking at the benefit for the money spent, you want to have a benefit that is actually reflected in as much achievement as you can. So that's what led me to suggest that as opposed to I think a strong concern that the states, in fact, would do something that literally made no sense and would probably get their attorney generals perhaps having another job after the next election.

So -- all right. Having you been defended by Your Honor -- by me, I don't know if you have anything more to say on that.

MR. HUEBNER: Your Honor, we rest on our papers.

THE COURT: Okay. Thank you.

(Laughter)

MR. HUEBNER: That's the only time in my life my argument has been shorter than my opponents.

(Laughter.

THE COURT: All right. All right.

I have before me a motion by the Debtors for either approval of their entry into or the approval of the assumption of any fee reimbursement letter, a copy of which is attached to the motion whereby they would agree to have the estate pay the reasonable fees and expenses of certain designated professionals for the loop of plaintiffs who pre-bankruptcy had agreed to a settlement framework with the Debtors. That has now been embodied in a term sheet.

The agreement has been modified as reflected in the proposed order submitted to chambers late last week and discussed on the record today and provided to the parties. But the basic concept is the same which is that the work that the four designated law firms and currently one designated financial advisor would be doing during the course of this case, not subject to strong rights of the Debtors to terminate the agreement, however, would be paid.

Because the Debtors are in bankruptcy such a proposal needs to be put forth and subject to notice of a hearing and the agreement has received a number of

objections as well as support from the other large group of states who have not yet agreed to a settlement framework in this case but are, in certain respects, working with the ad hoc committee that has reached a settlement framework.

The first issue for me to consider is whether the rubric under which the Debtors are seeking approval of the reimbursement agreement is permissible.

The United States Trustee has taken the position that because fees are at issue and obviously these are not the fees and expenses of professionals to be compensated under Section 330 and 331 of the Code, and that they're not retained under Section 327 or 1104 of the Code, that the only source for the authority to pay such fees and expenses appears in Section 503(b) of the Bankruptcy Code and specifically 503(b)(3) or (4) of the Code.

The Debtors, on the other hand, contend that I have the separate power to approve their motion as the assumption of a contract under Section 365 of the Code or for a proposed use of the estate's assets, in this case cash, under Section 363(b) of the Bankruptcy Code.

Other courts have addressed this issue before. The U.S. Trustee relies heavily, perhaps, you know, almost exclusively on In Re. Lehman Brothers Holdings, Inc, David V. Elliott Management Corp. 508 Br. 283 SDNY 2014, in which the district court reversed the Bankruptcy Court on a

reserved issue that was reserved at the time of the confirmation of the Lehman Brothers Chapter 11 plan.

That issue was whether the plan itself could provide for the payment of previously incurred fees and expenses of committee -- creditors' committee members, including their counsel, under a standard separate and apart from Section 503(3) of the Bankruptcy Code. For example, under Section 1129(a)(4) of the Bankruptcy Code.

In that case, Judge Sullivan concluded that 503(b) was the only source for paying such a claim and that Congress had specifically deleted the types of fees for committee members from the statute and therefore found that that provision of the plan could not stand.

On the other hand, the issue was directly raised on a case that I believe is much more on point in In Re. Bethlehem Steel Corp., 2003 WL 217, 38964, SDNY July 23, 2003, in which District Judge Mukasey overruled an objection by the U.S. Trustee made on essentially the same basis as the objection before me and affirmed Bankruptcy Judge Lifland's approval of the Debtors' payment of the ongoing fees and expenses of the United Steelworkers of America Captain, and subject to review, as set forth in that agreement.

This was an unsecured -- this was a creditor that held an unsecured claim. It clearly was not being retained

under Section 327 or 1104 and was not seeking payment under 503(b). Nevertheless, in a thoughtful opinion, Judge Mukasey affirmed Judge Lifland, in concluding that under Section 363(b) the payment was warranted and not precluded by Section 503 of the Bankruptcy Code.

The Court noted that these were for ongoing work. These fees would be paid for ongoing work as opposed to for past work and that the motion was made by the debtor as opposed to by a creditor.

The Court further said that subsections 503(b)(3)(d) and (b)(4) are not rendered meaningless simply because a certain unique -- in certain unique circumstances the bankruptcy court approves a debtor's motion to enter into an agreement to reimburse a creditor for professional fees.

In most cases, a debtor will make no such motion as it will not be in its business interest to do so or the Court will refuse approval under Section 363(b). That's in most cases if the creditor wants to be reimbursed, it must file an application under subsections 503(b)(3)(d) and (b)(4).

Those provisions continue to serve a purpose, a separate purpose.

I agree with that analysis and will note that just as Judge Mukasey and Judge Lifland noted in Bethlehem Steel,

there are a number of cases under the Bankruptcy Code are fact patterns under the Bankruptcy Code where Courts have approved payments of ongoing fees and expenses not under Section 503(b) but under Section 363(b) or sometimes under Section 365.

The most common is in connection with the debtor's request for approval or a restructuring support agreement that has garnered the support of some but not all of the debtor's creditors. Often those agreements are with secured creditors but it's not clear whether they are over secured and therefore would have a right to attorney's fee. But they are also in the past have been with unsecured creditors.

As Judge Mukasey noted, Courts have also approved paying reasonable fees and expenses of -- including legal fees of proposed bidders for the debtor's assets under Section 363 notwithstanding the potential applicability of 503. In fact, the Third Circuit made a distinction in the Applied Energy case discussed in Bethlehem Steel where there was no advance approval of such a request. The debtor didn't seek approval until thereafter and the disappointed bidder made its request, it had to make it under Section 503 and it was reviewed under 503.

But obviously the facts of the case are distinguishable from countless cases where courts have

approved at the debtor's request the payment of fees and expenses as part of (indiscernible) procedures.

Also courts have approved the fees and expenses of secured creditors in the case fairly routinely in cash collateral orders even where there's no showing that the debtors -- that the collateral serving for the secured creditor is sufficient to cover not only the debt but also the fees and therefore the secured creditor would be entitled to the fees. And there's no showing of the need to pay them as part of adequate protection.

Nevertheless, they're paid because of the role that the secured creditor is playing in the case.

So I conclude that the proper standard to review this motion under is, in fact, the standard applicable which I believe is applicable to both sections, 363(b) and Section 365 of the Bankruptcy Code.

I will note that there is case law that -- including in this District declines to approve the assumption of an agreement under Section 365 that provides for the payment of the debtor's attorney fees. See In Re. Financial News Network, Inc., 134 Br. 732 Br. SDNY 1991, which was a clear runaround the requirements of Section 330 and 331 of the Bankruptcy Code.

But, ultimately whether I'm applying 365 or 363(b) here, I believe it's the same standard for me to apply which

is whether the entry into the agreement and the performance of it including the ongoing payment of the professional fees is a proper exercise of business judgement and in the best interest of the debtors and their estates and creditors.

The case law as to the determination of what is a proper exercise of business judgment is I believe fairly clear in the Second Circuit and it is clear that notwithstanding the Integrated Resources case often cited by debtors in Section 363(b) motions, the Second Circuit has made it clear since that case that ultimately the bankruptcy judge has to make the decision as to whether the debtor has exercised proper business judgment in taking the action out of the ordinary course and/or assuming a pre-petition contract under Section 365. See In Re. Orion Pictures Corp., 4 F.3d, 1095, 1099, Second Circuit 1993.

Most of the time most actions out of the ordinary course are unopposed. If that's the case, the court ordinarily will defer to the debtor's judgment in entering into the agreement. Although, even then, the court has an obligation to make sure that that judgment makes sense. See In Re. Genco Shipping & Trading Ltd, 509 Br. 455, 463, Br. SDNY 2014.

But I believe clearly given the fact that Congress requires both under 363(b) and 365 of the Bankruptcy Code, notice of the opportunity for a hearing that where there are

objections in particular, the Court needs to carefully weigh all the opposing views as well as the views stated in support of the motion to determine, in its judgment, whether the decision is a good one or note.

The fact is that often in bankruptcy cases as much as the code and courts urge parties in interest to work together to a common goal, there are different points of view that are almost structurally required and ultimately that is why I believe Congress made the Court the final arbiter as to what makes good business sense for something like this.

Given my review of the motion and the supporting papers, as well as the objections to the motion, as well as oral argument today, it's first clear to me that the facts are largely undisputed.

The Debtors' cases are highly unusual. It may be there are more like them in the future. But the Debtors are largely in a sua generous position whereby they have already agreed to turn over all of their value to their creditors.

The question is whether that agreement should be augmented by a specific set of terms basically agreed with the ad hoc consenting group or whether additional terms can be agreed to that pertain to third parties of the Debtors' shareholders and further and as equally important how the resulting estate should be distributed to the creditors.

The unusual perhaps unique issue in these cases is that there is a distinct possibility that the allocation issues could either be dealt with in an efficient and fair way that's respectful of the various parties-in-interest in this case or the parties can spend an inordinate amount of time disputing them to all their detriment.

One would think if you sit in bankruptcy court every day, as I do, that that issue also is common to bankruptcy cases. And, as I just articulated, it is. What is different here, however, is that this is a fundamentally public health crisis driven case where the claimants, in one sense, can be almost every citizen in the country. That is why every state, except the two states that have already settled with these Debtors, has taken a highly active role not only in this case but in the litigation that preceded this case in federal and state court.

Thus deciding how the public at large is to benefit from the agreement that the Debtors have already made and a potential agreement from their shareholders is truly unusual.

It appears clear to me that we would not be in this place but for the work done by the states in general and that has been acknowledged by those who have objected to this motion as well as the Debtors.

It's also clear to me that the states have a

unique role in these cases because of their unique position. First of all, they are the sovereign state governments of the 48 states involved.

Secondly, because of that, they have unique rights under the Bankruptcy Code. Those rights can be tested in a wasteful way or they can be reserved for a future day if the states are satisfied that the process is proceeding in a way that is credible and acceptable to them.

At this point in the case, the latter, to my relief, appears to be the approach that the states have taken. Not only the ad hoc group of so-called settling states but also the ad hoc group of non-settling states.

But those types of issues I believe need to be dealt with sensitively throughout these cases. I think it's correct that the Debtors recognize the unique role that the states have played and will continue to play in these cases. And, frankly, I believe that such recognition is in the best interests of all of the Debtors' creditors.

It is clear to me from today's record that the states need to perform their own analysis, their own due diligence, and be heavily involved in the rest of these cases as they have been so far.

While it appears to me that we are quite fortunate in this case to have an active and well represented official committee of unsecured creditors, the states' interests are,

as I said before, unique and require unique steps to insure that they are dealt with in a sensitive and an appropriate way.

I believe it is reasonable for them to want to perform their own due diligence, do their own analysis, and it is in the interests of the Debtors' estates and creditors that they do so in an efficient and organized way which means focusing their work through point counsel and point decision makers who then develop transparent ways to communicate to their colleagues.

The question is is it necessary, or at least a good business decision, to pay for that work at this time as the motion proposes.

That is not an easy question to answer as evidenced by the well argued objections under Section 363 while applying Section 363(b)'s standard and it's my job to sift through whether this expenditure of that money just in terms of sheer dollar amount as well as any affect that that expenditure would have on these cases is a proper exercise of business judgment.

Any dollar that the Debtor can spend to solve the health crisis that is the reason for its case one would believe is a dollar well spent. So taking any dollar away from that is a difficult decision to make.

However, it is also the case that because of the

context of this case and the difficult issues it raises, dollars will need to be spent to resolve those issues in an efficient and fair way. The Debtor just can't put a chest of money out on the street and say come and get it.

Instead, the parties-in-interest need to approach the problems that this case presents in a very thoughtful and creative way. That takes times and it takes money.

The creditors committee and its allies in connection with the objection to this motion takes the view that this -- the expenditure of any money here is premature because we are not yet at the stage where -- let alone there is a plan but there's not even a restructuring support agreement.

It also notes that the cost of this motion could be high although I take issue necessarily with the view that it would be 15 to 20 million dollars because that is a cost spread over several months and the Debtor has the right, at any time, to opt out of this agreement and the agreement, in any event, unless extended, ends, if there is no RSA, by, in essence, a month of so from now.

So I view the issue about whether this relief is premature a little differently. It seems to me that with the limitations imposed by the changes to the proposed order, the work that would be compensated here would be appropriately compensated and be to the benefit of all the

parties in this case. As far as the analyses of the Debtors and their business, which includes difficult analyses about not only their -- the value of those businesses but also how to monetizes them including non-debtor entities and also due diligence and work in connection with analyses of causes of action that the Debtors have that may well be equal to or greater than the value of their hard assets and their businesses.

I believe that's what is now appropriately compensated under this revised agreement.

The committee has argued that that work will be done anyway if I don't approve this agreement and it is possible that some portion of it will be. However, as I said during oral argument, this motion is as much, if not more, about bringing structure to this case as it is about the actual hard dollars spent on paying for the work to be done.

I believe without such a structure, i.e., where there are clear lines of communication and clearly defined roles for the professionals for the ad hoc group, there would be a substantial risk that the trust, based on assessments of the Debtors' credibility, that has been generated over the last three months or so, would be frayed and potentially lead to what I believe would be a major step back in this case which is or which would be various states

and the PEC group feeling that they were on their own and taking therefore diverse and unorganized positions.

Besides the due diligence, the next major step in this case, which I've already, and I know I sound like a broken record, but I've said it two or three times now, needs to be focused is creative thinking about the allocation of the Debtors' assets.

I continue to believe that the states play a major role in that process. The role I'm envisioning for them is not one where they say we get everything. I think that should be clear and I think it is clear to them.

But, rather, where they act as -- in the best principles of federalism, for their state, the coordinator for the victims in their state.

Thus, I would expect the people from Mr. Neiger's group, for example, to be working with the states closely to maximize benefits because it appears to me from his description of his group that they're not so much focusing on individual claims as a way to deal with a whole host of individuals.

And there may be very good ways to do that in a particular state and less good ways in another state and I hope that the states will act as a way to coordinate that type review.

There is a legitimate concern that those hopes

will not be fulfilled. I don't think that will be the case. I think the states appreciate that this money needs to go where it is most in need of going and that we don't repeat the experience of some states from the tobacco settlements, for example.

But because of that concern, even though I believe it is not the likely outcome in this case, I think that there should be two additional conditions on certain of the work reimbursement.

First, I believe work done on this critical issue of allocation should, like the pre-petition work covered by the agreement now, be payable upon the earlier of the Court's approval of an RSA or confirmation of a plan.

For those of you who are not bankruptcy lawyers that doesn't mean that I'm disapproving it. Rather, I would look at the time that an RSA is proposed and see whether it, in fact, makes good business sense and that may not mean that it has to be universally accepted but that it is a focal point for moving the case to the next step.

I want to be clear that what I'm conditioning on the approval of an RSA is not all of the work but just work on the allocation issue and, knowing the professionals involved, I know they know how to bill by separate tasks to cover that.

Secondly, I believe that that RSA needs to have

within it, if not -- and I'm not ruling out anything before then, but it needs to have within it a valid and credible proposal for the emergency use before confirmation of a plan, of a substantial amount of the Debtors' cash because I do think it is important for the parties-in-interest to be focusing on that use now.

I appreciate that those two conditions put the ad hoc group at some risk for some portion of the fees at issue here. On the other hand, I believe that that risk to them is minimal given how they've conducted themselves so far in this case and my belief that past is prologue, i.e., that they will continue to be constructive; continue to try to achieve consensus and, most importantly, consistent with their roles as representatives of individual states as well as the plaintiffs who have -- who brought the pre-petition litigation, that brought us to where we are today, will see the need to continue to contribute in these cases in a way that brings the parties together in an efficient and fair way.

So, with the changes that had previously been agreed to, all of which I believe were well considered and warranted, I will approve the motion with those two additions.

MR. HUEBNER: Your Honor, I would never agree to leave a hearing with the Court having a potential factual

mis-impression. So there is one small thing you said that I actually don't think is --

THE COURT: The date for the RSA?

MR. HUEBNER: Correct. Let me explain because it's actually three different documents have to actually all be tracked to understand it. In fact, everyone needs to understand it and certainly the Court most of all.

The September 15th fee letter contains a termination right for the Debtors if an RSA is not executed by the parties by December 13th, 2019, unless extended by the company.

THE COURT: Right.

MR. HUEBNER: So we have -- originally we were trying to pace them to a fast schedule and we had a termination right unless we chose to extend it.

THE COURT: Right.

MR. HUEBNER: Then on October 11, that I'm pretty sure I won't misspeak, because I actually have it in my speech in a footnote in case it came up, the UCC stipulation that we agreed to we discussed earlier today obligates us not to get approval for an RSA unless the UCC consents to it before April 8th, 2020. The exact words for the avoidance of doubt.

The Debtors agree that during the initial stay period they will not, one, file a Chapter 11 plan, or

disclosure statements for any of the Debtors or, two, a motion seeking approval of a restructuring support agreement or a similar agreement with any party, in each case, absent the support of the UCC. So, that's two.

Then three is the term sheet with the ad hoc group that was entered into three days before. That gives them a right to seek to terminate the stay if we do not have an RSA approved by (indiscernible).

So just -- unless I misheard --

THE COURT: But you still have the right to terminate it December 13th.

MR. HUEBNER: A hundred percent, Your Honor. My only point is you -- I believe you said, and forgive me if I misheard, although I don't think that I did, this may all be resolved in a month anyway.

THE COURT: Well, if the people aren't working they way they're supposed to, you can terminate it.

MR. HUEBNER: Yes. My only point is we would be violating our stip with the UCC.

THE COURT: To file something.

MR. HUEBNER: To --

THE COURT: I understand that.

MR. HUEBNER: -- move for approval which we have no plans to do.

THE COURT: I understand that.

MR. HUEBNER: I apologize if I thought any one -- no one anything they don't already know but I just thought that the interplay of the documents is not simple.

THE COURT: Right.

MR. HUEBNER: And I want -- I wanted to be clear for myself.

THE COURT: But you do have a reality check. You see --

MR. HUEBNER: Every morning.

THE COURT: -- that this is -- well. But -- but I mean you can --

MR. HUEBNER: No, no. That's not humor at all.

THE COURT: No. But you can literally opt out --

MR. HUEBNER: Every morning.

THE COURT: -- in a month.

MR. HUEBNER: Or a week. Or two weeks or three.

THE COURT: Although I doubt you would do that.

MR. HUEBNER: I think that's probably --

THE COURT: So I guess the one aspect that I should clarify is that the emergency fund point is like an outside for the term sheet that I said because that would be an April.

MR. HUEBNER: After April frankly.

THE COURT: Hopefully people will focus on that before then, too.

MR. HUEBNER: Yeah. Your Honor, you know, if (indiscernible) and it's aftermath taught anybody wise anything, it's that when Judge Drain expresses his views very clearly several times in open court, it probably makes sense to listen.

I'm pretty confident that parties understand exactly what the Court believes is the right set of things to do in the coming weeks.

The Debtors I believe certainly do and we'll be back to the table as soon as we leave the courtroom.

THE COURT: All right. So you're going to have to obviously revise the order somewhat.

MR. HUEBNER: Yes. And will settle it obviously with the objectors.

THE COURT: Well, you don't have to formally settle it but you should circulate it.

MR. HUEBNER: That's what I meant. Yes.

THE COURT: Okay. All right. Very good. Thank you.

(Whereupon, the proceedings were concluded at 2:24 p.m.)

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C E R T I F I C A T I O N

We, Sherri L. Breach & Penny Skaw, certify that the foregoing transcript is a true and accurate record of the proceedings.

Sherri L Breach

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